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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

NO. A-864

Annie Mary Timmons,

Petitioner

v.

Robert C. Andrews, D. Reese Williams,
William H. Tuller, Grover C. Kirby,
Charles H. Thomas, Joe E. Winter,
John T. Campbell and Graydon V. Olive,

Respondents

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fourth Circuit

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IN THE

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Annie Mary Timmons,

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Robert C. Andrews, D. Reese Williams,
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Respondents

Petition for Writ of Certiorari to
The United States Court of Appeals
For the Fourth Circuit

The Petitioner petitions for a writ of Certiorari to the United States Court of Appeals for the Fourth

Circuit for review of that Courts' affirmation dated Dec. 24, 1981 of the judgment below and of the order of Jan. 27, 1982 denying Petition for Rehearing, thereby confirming demolition of all the Petitioner's valuable properties in the City of Columbia, S.C.

In accord with the Clerk of Courts instructions by telephone to correct her timely-submitted Petition damaged by a Copy Shop's faulty duplication of same the Petitioner does hereby amend her petition in an effort to meet the Clerk's requirements even though her Claim for Interlocutory

Injunction previously submitted to the Court would hold all Matters in Allegiance until adjudicated.

The Petitioner would appreciate the Courts consideration of the larger Appendix submitted with her Petition first in conjunction with this 2nd attempt. The larger Appendix Clarifies the case but cannot be authentically transferred to smaller pages without reducing the type against the rules. A small inadequate App. is included herewith. The Clerk retained 10 copies of my first petition for the Court. The 1st appendix is App. 1 and the 2nd APP 2.

Questions Presented

1 Can City Officials take over private properties by the sole means of Officially

denying the owner of all constitutional property rights and by violating all the laws in connection therewith without making a single legal or just move when all other citizens have to obey the laws?

2. Can private property be seized -

Without a complaint
without Notices
without a hearing
without evidence
without testimony
without evaluation
without a possible decision on "fitness or unfitness" of Bldgs for human habitation
without 120 days allowance for the correction of each defect

where all of these prerequesites listed as missing are absolutely necessary prior to the posting of any Bldgs with condemnation signs?

3. Should the Court affirm the illegal and criminal taking of private property where such affirmance would turn the law-breakers' heretofore-frowned-upon black path of criminal violations of rights and laws into a golden highway of shining success brilliantly lighted by the Court's undisturbed approval and constituting the most perfect cover-up for crime possible under the sun and the greatest protection for greedy criminals in position to use the public trust to satisfy their own selfish desires?

4. Should the Appellant be denied her right to Due Process of Law which would be afforded by the Completion of her Appeal?

5. Can an Official demolish properties acquired, built and operated as nonconforming with respect to the number of Units where all the laws repeatedly protect the nonconforming uses for the existence of the Bldgs?

6. Should the owner be denied her opportunity to complete her Appeal pending in the Court of Appeals because of a decision upon her Motion submitted for protection in a near-death emergency?

7. Is it not possible for the Appellant to have a fair Hearing in a just court where she has been deprived of one repeatedly by legal trickery and collusion?

8. Can affirmation of a decision to demolish remain firm where such decision on face value was made on the basis of false findings of fact and irrelevant inapplicable conclusions of law?

9. Can a law alleged as authority for the condemnation deprive a property owner of life, liberty, and property when that authority was not even adopted as a part of City Ord. until April 24, 1974 more than two and one-half years after illegal posting of condemnation signs ?

10. Can the decision allegedly based on

Ord. 103. 2 be allowed to stand where a part of that law makes the Rehab Official a Dictator and renders the Ord. with authorizing Statutes 31-15-30 and 31-15-70 as unconstitutional over-all?

11. Can a Decision based on an obviously erroneous transcript of testimony stand where Appellant's Motion for correction of same was denied and the transcript was to be used with pending appeal?

12. Should a decision remain affirmed when it was made in the face of Appellees' repeated admission of the guilt of failing to serve the Appellant a Complaint and Notices, to hold a hearing and make legal evaluation of "unfitness"?

13. Can affirmation of a decision be unreviewed when said affirmation itself expresses uncertainty and doubt as to just exactly what the Court is affirming in the words "or even if we consider the Motion for Summary Reversal" where that Motion with the answer to same would necessarily

be the proper material for the Court's consideration?

14. Can Appellees effect denial of Certiorari by publicizing spectacular creations of the condition of the Bldgs and if possible getting such reports to the Supreme Court by way of an influential politician in order to preclude any possible chance for a hearing where all such reports are false and constitute more schemes to avoid Court, to get rid of the owner and to get hold of the properties?

15. Can a local Judge's Order dated Apr. 30, 1982 restraining the Appellant from taking any action to interfere with demolition of the Bldgs or to take or haul anything away from the Bldgs at the end of June 26 bring about demolition of these Bldgs where the Order was signed nearly 2 months prior to due date for Petition for Writ and End of Stay or would his action and Order be invalid?

16. Is a local court order valid where one part of the order denies jurisdiction of that court and the rest restrains the owner-defendant from objecting to demolition?

17. Can a decision adverse to the Appellant stand undisturbed where there was no applicable evidence submitted by Appellees except one sentence which was proved false?

18. Can a Zoning Decision allowing 14 units in lieu the 72 units in use be valid where the decision is substantiated only by Or. 5-2.5, a simple well-stated one-sentence law cut in half to misrepresent the entire intent of the law?

19. Can a Zoning Decision be valid where the Court kept the appeal in an

abandoned State for 2½ years and then ruled that Court had no jurisdiction?

20. Can the Supreme Court affirm a decision that gives the green light to Officials for the continuation of obvious denial of a property owner's constitutional rights and violation of all applicable laws, by collusive and conspirational action where the highest Court has expressed definite repugnance for "Injurious" actions of Officials even tho said conduct be committed in good faith?

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Building Code 103. 2

Opinions Below

The Opinion of the United States District Court for the District of South Carolina granting Respondents' Motion for Summary Affirmance is printed in the Appendix hereto (App.2 pp.9-20) and is followed by the Opinion of the Court of Appeals which affirmed the District Court (App.2pp.7-8).

JURISDICTION

The Decision of the Court of Appeals was made Dec. 24, 1981. Petitioner's Motion for Rehearing was decided Jan. 27, 1982. (The Order Denying Rehearing also grants a Stay of Mandate for 30 days and other Orders Stay the Mandate through Mar. 27, Apr. 16 (corrected by letter to read April 27) and June 26, 1982. Chief Justice Burger extended the time to file Petition for Writ of Certiorari to and including June 26, 1982 (App.2 p. 1).

The Jurisdiction of this Court is invoked under Title 28 USC Section 1254 (1) and 2101 (c).

Statutes Involved

Statutes involved being lengthy are cited at this point and printed verbatim in the Appendix.

The laws violated by Respondents are as follows:

United States Constitution.

Amendments

IV, V, VI, VII, VIII, XIII, and XIV

Articles of the Constitution

1 Sec 9, 1 Sec 10, 3 Sec 2, and 6

South Carolina State Statutes

31-15-30

31-15-70

City Ordinances

5-1, 5-2, 5-2.1, 5-2.3, 5-2.5, 5-2.6, 5-3, 6-6.2, 6-3, 10-2, 10-3.1, 103.2, and current 103.2 (a-3).

STATEMENT

The whole story of this Appellant and her properties has been and is a long bitter struggle for survival and property rights. The right to life, liberty, and property should mean happiness and not intolerable persecutive burdens. The Appellant filed this suit Dec. 31, 1974 seeking a declaratory judgment determining the unconstitutionality of the condemnation demolition action against her in 1971 both as to the unlawful manner of the taking of her property and the City Ordinance with State Statutes alleged to be the authority for same and petitioning for injunctive relief to prohibit demolition and to bring about issuance of permits for the repair of these Bldgs for the continuation of their legal non-conforming uses as rental units.

For 7 years the Respondents precluded a District Court hearing of the case by legal chicanery and unwarranted Motions to dismiss. During

those years the District Court dismissed the case twice and the Court of Appeals reversed the case twice and remanded it.

Finally on July 28, 1980 the District Court tolerated a hearing of a kind in which the rank unconstitutionality of the condemnation proceedings and the authorization for same was in the main ignored and avoided by Respondent and the Court. Appellant had to endure misrepresentation and derogatory remarks by counsel and the Court while it was she alone who presented the true facts and applicable laws. The District Court denied Appellant's request for relief on the ground that "the plaintiff has presented no evidence in which injunctive relief will lie" and judgment was entered for the Respondents.

The Court of Appeals settled Appellant's Motion and documentary evidence in 361 pages in 2 words "without merit" and affirmed the

District Court Judgment. The Decision also denies Petitioner's Motion with respect to the very erroneous transcript of testimony and states "Even if we consider the Motion for Summary Reversal" when Appellant's Motion and Respondents' Answer were the documents to be weighed and not the "Even if we consider the Motion" remark(App 24a)

The Appellant acquired title to the properties herein involved about the years 1940 - 1944. She used whatever part of the Bldgs standing on the properties at the time of purchase and of course built by far the greater part of them. If there was no Bldg she constructed one. Note the pictures of the Bldgs (App2p6a-6)some of them beautiful even after years of deliberate damages and deterioration from forced non repair and deterioration by heavy RAINFALL.

Appellant constructed these Bldgs in accordance with the City Code submitting plans in keeping with City requirements. She endured the hard struggle to construct the living units as planned because she was helping greatly with official approval to alleviate the ever-increasing critical housing shortage of the specific type of accommodations she was furnishing--comfortable, private, decent living units at reasonable prices for singles, couples or families not exceeding 3 in number serving in various types of business and govt work like Army Officers, soldier couples, students, teachers, nurses, etc.

The City fully approved plans for these bldgs and their non-conforming uses and rights from the day plans were submitted and construction begun until the Rehab dictator's sly posting of condemnation signs.

All Bldg Codes from passage of the original Ord. May 29, 1924 through the present Code are

protective of the existence and continuation of non-conforming uses as:

> Bldg Code 1933 Sec. 12:
> "A non-conforming existing use on May 29, 1924 may be continued..."
>
> Bldg Code Feb. 6, 1963 Sec. 230.02:
> "It is the intent of this Ord. to permit these non-conformlees to continue until they are removed..."
>
> Sec. 230.05 "No such structure may be enlarged or altered in a way which increases its nonconformity."
>
> Bldg. Ord. 1974 - Sec. 5-1:
> "It is the intent to of this Ord. to permit these non-conformitees to continue until they are removed..."

See City Ord. printed herein (App.) pages 28-31)

It took years to complete the originally-planned Bldg of 235 units on the lands acquired from about 1940--1945. But upon completion in lieu of the song of joy and achievement on the eve of fabulous long-deserved return came a dirge of a living death – lying propaganda, illegal acts, trickery, fraud, deception, violations of constitutional rights,

misunderstanding, and in the last stages of suffering poverty, crushing of hope and spirit, and the absence of all things that make life worthwhile.

Following completion the Bldgs were kept in excellent condition at all times, being serviced every day by workmen employed for the purpose. If anything needed repairing it was quickly and efficiently repaired. If anything needed replacing it was replaced .

The Appellant's serious highblood pressure condition necessitated employment of a property manager temporarily. When the plan to confiscate reached the illegal posting of condemnation signs there was nothing left but harassment, criticism, warning, tricks, physical attack, etc. He was prevented from doing his job but continued to do all he could spending more and more time trying to get contractors to find out what the condemning

official wanted done and to do it. His constant efforts and those of the owner, her attorneys, friends and acquaintances brought about more than 100 attempts to obtain permits to repair these sound bldgs forcibly made non-productive. All attempts were directly denied or turned aside. Contractors and workmen could not afford to lose jobs and favors altho many hated the wrong actions of officials. The telephone pages were followed each year in an effort to get a contractor who could obtain repair permits.

Appellant never gave up hope completely that somehow someone might actually succeed in capturing the privilege of paying for a permit to repair her Bldgs since issuing repair permits is a routine official duty easily handled in a few minutes time. It occurred to her that the regular refuser of permits in this case might be off duty some day when another fresh prospect was contacted to try for a permit again.

Time and space allow for only the mention of a few other examples of violations of rights and laws in this case.

1. With the knowledge that demolition bids were being mailed out, the owner on Dec. 31, 1974 filed the Complaint in the District Court.

2. During the agonizing 7-year period of stagnation in that Court the Appellant about Thanksgiving time in 1975 following an operation for cancer of the colon in Florida and upon advice of physicians not to travel for about 5 or 6 weeks more, did come to Columbia for a Court trial on a Complaint of an out-of-state con. man who, pretending to represent the owner, colluded with the City and State against her. While the jury was considering the case, the Rehab Official sent a deputy with 6 criminal warrants to arrest Timmons in the Courtroom waiting for a jury decision of a case unrelated to the City

case. Without even a misdemeanor she, hardly able to sit up, was arrested in the Courtroom with threats of being handcuffed and dragged out if she objected to the arrest made for some reason in connection with repair of her Bldgs. The lawyer on the case had walked out at the start of the trial and another lawyer managed to arrange bond with her money being held illegally by the Court. She was persecuted with notices for months but no hearing was ever held and no bond money ever returned (App. I p. 37-39). The jury probably saw her leave the court house and gave the con. man a sizable verdict when she couldn't get $1 from her own money for bread or medicine.

3. In Nov. 1976 owner was ordered personally to apply for repair permits and was illegally ordered to the zoning Dept. where applications were "fixed" to make it appear that zoning was a reason for the posting of signs in 1971 (App I 24-25) raise

information would establish their right. Even the leaflet of information in the office (App./p.). clearly stated "new construction" as the only concern of zoning. The zoning administrator admitted she could not repair large apt. bldgs into the number of units according to lot requirements and that she should purchase permits then to save her bldgs. She was promised a permit if she'd get a contractor's license. She got one in 15 minutes but no repair permits were issued. (App 2 pages 34 - 35; pp. 56-57)

4. In 1978 the owner was ordered to apply for repair permits again in person and again forced to zoning where she was told to appeal to Zoning Board or she would never get a permit. The Zoning Board Hearing was an outrageous fiasco and a disgrace to integrity (App./ p. 23-25). She appealed the Zoning Board decision to the Court of Common Pleas and the case was seemingly abandoned for several years (App 2 58 - 59)

5. At the close of 1980 and the beginning of 1981 near-death illness caused the zoning case

to be brought to life IN APPELLANT'S OPINION.

6. In early 1981 a case on the issue of permits (It had been filed by Appellant's lawyer in 1977) was rejuvinated, decided by the Supreme Court of S. C. and published in the newspapers denying her Appeal on permits in big headlines on demolition while appellant was under the knife in the hospital

7. In 1982 zoning was scheduled and Appellees disposed of it by bringing in a Special Appearance to object to jurisdiction. That was after it had been in Court nearly 3 years.

8. Jurisdiction case was scheduled and Appellees jumped to a Rule to Show Cause action.

9. Judge James E. Moore denied jurisdiction of the Court, calling that part of his Order zoning and then ruled against the Appellant-Defendant on the Rule to Show Cause order including the denial of jurisdiction, thereby INVALIDATING his own Order.

Since the illegal posting of condemnation signs in 1971 there has been no way to make a move except to demolish according to the unconstitutional law allegedly being followed and with unconstitutional actions against the owner in progress constantly.

The owner couldn't repair in the face of these conditions:

1. Consistent refusal of repair permits and without complaint.
2. Deliberate damages, planned arson and theft.
3. Unrestricted criminal actions against the owner.
4. Total disregard of Court injunctions prohibiting interference with these properties.
5. Judges or substitute judges signatures on court orders restraining the owner from making repairs.
6. All actions in connection with these properties or owner violative of rights and laws.
7. The raising of a hammer in repair a promised sign for instant arrest and jail sentence.

Appellees left nothing without ban open to Appellant except death.

Reasons for Granting Writ

1. Certiorari should be granted to allow the Court to unseat the newly-established precedent endorsing wholesale confiscation of properties through the "sole" method of violating constitutional rights and laws 100% without the requirement or need for a single legal act throughout the taking procedure and litigation.

The danger of turning a black path of criminal violations of constitutional rights into a brilliantly lighted golden highway of success creates a highly-dangerous situation that has never before been considered in such scope and demands settlement by this Court in order to break through the cover-up of deliberate schemes for confiscation under guise of law and immunity which at this point is made far more powerful by the affirmation of the Appeals Court.

2. Certiorari should be granted in order to remove Judicial Approval from the misuse of public trust for the purpose of confiscation of private property at a cost to the citizen of her life, liberty, and property and at the cost of a higher risk of losing these things to all others.

3. Certiorari should be granted because without it this petitioner will have lost all without ever having been heard in a fair Court of Justice and therefore without the protection afforded by Due Process of Law, thereby creating a departure so far from the accepted course of judicial proceedings as to call for this Court's supervision.

4. Certiorari should be granted to settle the unconstitutionality of Enactments used in this condemnation process that are designed for the creation of a Dictatorship.

5. Certiorari should be granted in order that consideration of the Appellant's evidence and

proof be given by a fair Court of Justice in view of the fact that Appellees have won every bout in Court without submitting any applicable evidence at all except one sentence which was proved false in Court, while the Appellant has submitted many pages with substantiating documents in proof of her case.

That one line reads as follows and comes from an affidavit by Rehab Official Joe Winter in 1974, the only applicable evidence ever given in--"Complaints were sent to plaintiff by registered mail but returned to the Urban Rehabilitation unopened" (p.63 App. 1 before Correction and p169 full copy of case; and App 2 p55

6 Certiorari should be granted to settle the issue of precedency between an Appeal pending in the United States Court of Appeals and a motion interjected for extreme emergency reasons with the right reserved to complete the Appeal and get a final decision should the Appellant live. This may be a remote issue applicable to one of many cases but should be settled by this Court.

Note: It should be explained here and now that the Decision sought to be reviewed was made specifically on Petitioner's Motion for Stay of Demolition called by the Court of Appeals a Motion for Summary Reversal and interjected into the case by the Petitioner during her pending appeal in an effort to prohibit demolition of her Bldgs quickly in the face of small hope given for her life and in the hope that someone might finish her Appeal. Now having been denied the opportunity to finish her Appeal because of the Court's affirmation of demolition of her properties in lieu of allowing her to exercise her right to be fully heard through briefs,

supplementary information, hearing, rehearing, Argument, and possible unforeseen opportunities to submit further evidence by Court Order for same, the Petitioner has no course open except to seek Justice by Petition for Writ of Certiorari. Her letter of transmittal with her Motion for SUMMARY Reversal explain her belief in Appeal under the circumstances (App p. 57). SINCE THEN She has Submitted her DECLARATION AND CLAIM of JUNE 25, 1982 which would now hold her Petition for Cert. IN ABEYANCE. However, She proceeds with An TIMELY PETITION for WRIT!

The course of Certiorari appears to be a favorable opportunity for justice since the Court is aware that the Decision in question was made on Petitioner's Motion to prohibit demolition called motion for SUMMARY Reversal submitted under urgent AND and justifiable circumstances while her appeal WAS is still uncompleted.

The Supreme Court vested with the power to administer justice as it sees fit by reversal, modification, review, completion of Appeal, New Trial or a mere declaration of what is right and of that which is unconstitutional can issue such Orders

as would protect the owner against further denial of Due Process of Law in the destruction of properties and prevention of repairs to the damages done to them after illegal take-over by Official in 1971 under guise of law with the full protection they believe to be afforded by undisputed immunity. Such denial of Due Process of Law has created the Questions Presented already (App 2 pp 2-9) for consideration by the Court.

Petitioner has submitted proof of every line she has written in her Motion for Stay of Demolition called by the Court "Motion for Summary Reversal" which is the document upon which the Court of Appeals decision was rendered.

Within the limits of Certiorari it is possible only to mention a few more reasons why Certiorari should be granted to settle the following issues:

7. Whether a false substantiation for an illegal action created 7 years after commission of same can stand.

8. Whether an affirmed decision can remain unreviewed when confirming condemnation action substantiated only by a law not even adopted until 2½ years after the illegal condemnation.

9. Whether an affirmation based on the stated uncertainty of the Appeals

Court as to what that Court is deciding upon can be allowed to stand.

10. Whether a decision can remain unreviewed when the alleged authority for the action being decided creates a perfect dictatorship in complete violation of the Constitution of the United States.

11. Whether an affirmation based on a decision adverse to one party can be upheld despite the opposing party's admission of guilt.

12. Whether property can be confiscated by means of law distorted by Respondents to Misrepresent the entire meaning

and intent of the law.

13. Whether the Court will accept spectacular false publicity in lieu of Court consideration.

14. Whether deliberately-schemed collusive action against a citizen and property owner can be denied review when this Honorable Court has already frowned upon "injurious" action by officials even where said conduct is committed in good faith.

Certiorari must be granted because the Court of Appeals has affirmed wholesale denial of constitutional rights and violations of property laws in conflict with Applicable rulings of the Supreme Court.

The Supreme Court in the voice of Justice Brennan gave clear and powerful support to the Constitution of the United States in these words:

"The knowledge that a municipality will be liable for all of its injurious conduct whether committed in good

> faith or not should create an incentive for Officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights.
> "Furthermore, the threat that damages might be levied against the City may encourage those in policy making positions to institute internal rules and programs designed to minimize the likelihood of unintentionable infringements on constitutional rights."
> (Owne v. City of Independence, 445US622 63 L Ed 2d673, 100 S. Ct 1398).

Justice Brennan feels and frowns upon injustice and hurt suffered by a citizen and tries to protect him even from unintentional infrigements of constitutional rights.

There is not the slightest possibility that this Court will let stand a decision affirming flagrant planned undisputed violations of rights and laws, the first of which reduced the owner's life to a veritable hell-on-earth existence of involuntary servitude, a condition of forced stale-mate, deprived of all things and given a heart as heavy as lead kept moving only by the golden thread of hope that her constitutional rights might be upheld by this Court.

CONCLUSION

For all the foregoing reasons and in view of the fact that every word stated herein is proved by the 361 page motion now before this Court for consideration plus 1000's more pages already filed,

Petitioner prays that the court will grant her Petition for Writ of Certiorari or make whatever decision it takes to uphold constitutional and God-given rights to life, liberty and Justice.

Respectfully submitted,

Annie Mary Timmons
Pro Se

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that required Petition for Writ of Certiorari corrected as per Court instruction was served on Robert G. Cooper, Esquire by depositing same in the United States Mail, postage prepaid, on the 17th day of July, 1982 addressed to:

Robert G. Cooper, Esquire
Office of City Attorney, City Hall
P. O. Box 147
Columbia, S. C. 29217

Annie Mary Timmons
Annie Mary Timmons
Pro Se
3104 Monroe Street
Columbia, S. C. 29205

July 17, 1982

SWORN TO before me this
_____ day of July 1982.

Sidelle D. Ott
Sidelle D. Ott, Notary Public for South Carolina
My commission expires March 9, 1991.

Office - Supreme Court, U.S.
FILED
JUN 30 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

NO. ~~A-864~~ 82-123
On Writ of Certiorari

Annie Mary Timmons,

Petitioner

v.

Robert C. Andrews, D. Reese Williams, William H. Tuller, Grover C. Kirby, Charles H. Thomas, Joe E. Winter, John T. Campbell and Graydon V. Olive,

Respondents

APPENDIX

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fourth Circuit

Annie Mary Timmons
Pro Se
3104 Monroe Street
Columbia, S. C. 29205
Ph. No.: 803-256-1417

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1561

F I L E D
Apr 23 1982
U. S. Court of Appeals
Fourth Circuit

Annie Mary Timmons,

Appellant,

versus

Robert C. Andrews, D. Reese Williams, William H. Tuller, Grover C. Kirby, Charles H. Thomas, Joe E. Winter, John T. Campbell, Graydon V. Olive,

Appellees.

O R D E R

Upon motion of the appellant's pro se motion to extend stay of mandate and the appellees' response thereto,

IT IS ORDERED that the mandate in the above-entitled case be, and it is hereby, stayed to and including June 26, 1982, pending application of the application of the appellant in the Supreme Court of the United States for a writ of certiorari to this court.

For the Court - by Direction
/s/ William K. Slate, II
CLERK

SUPREME COURT OF THE UNITED STATES

No. A-864

Annie Mary Timmons,

Petitioner

v.

Robert C. Andrews, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including ------June 26-------, 1982

/s/ Warren E. Burger
Chief Justice of the United States

Dated this 15th

day of April, 1982

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1561

Jan 27 9:45 AM '82
U. S. Court of Appeals
Fourth Circuit

Annie Mary Timmons

Appellant-
Petitioner

v.

Robert C. Andrews, et al

Appellees-
Respondents

ORDER

We have considered the petition of Annie Mary Timmons for rehearing in this case and are of opinion it is without merit.

It is accordingly ADJUDGED and ORDERED that the petition for rehearing shall be, and the same hereby is, denied.

We have also considered the motion of Annie Mary Timmons to stay the demolition of her property until final decision by this court (which decision is today entered as a part of this order) and, if adverse,

to stay demolition until after the decision of the United States Supreme Court. We construe this motion to be a motion to stay our mandate, which we have considered and are of opinion that it ought to be granted.

It is accordingly ADJUDGED and ORDERED, in accordance with FRAP 41 (b), that our mandate shall be, and it hereby is, stayed in this case for a period of 30 days from the day of filing of this order in order that Annie Mary Timmons may apply to the United States Supreme Court for appeal or certiorari, as the case may be.

With the concurrences of Judge Hall and Judge Phillips.

For the Court

FILED

Jan 29 1982

U. S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1561

Annie Mary Timmons,

Appellant,

v.

Robert C. Andrews, D. Reese Williams, Grover C. Kirby, William H. Tuller, Charles H. Thomas, Joe E. Winter, John T. Campbell, Graydon V. Olive,

Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Robert F. Chapman, District Judge.

Submitted: October 9, 1981 Decided: December 24, 1981

Before Widener, Hall and Phillips, Circuit Judges.

(Annie Mary Timmons, Appellant Pro Se. Roy D. Bates, Robert G. Cooper, for the Appellees.)

PER CURIAM:

Annie M. Timmons, proceeding pro se, appeals the district court's entry of judgment for defendants in this diversity action. 28 U.S.C. § 1332. She moves this Court for summary reversal of the district court's action. A review of the record and materials before the Court convinces us that the appeal is without merit and that oral argument would not aid significantly the decisional process. Therefore, we dispense with argument and affirm the judgment below on the reasoning of the district court. Timmons v. Andrews, C/A No. 74-2049 (D.S.C., Aug. 11, 1980). *

AFFIRMED. [1]

1. We have considered appellant's motion filed October 19, 1981 with respect to the transcript, and, even if we consider the motion for summary reversal along with the transcript, it does not alter our decision.

* In view of our disposition of this appeal, Timmons' "Motion to Stay State Court Proceedings" is denied.

5

ENTERED
8-12-80

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COUTH CAROLI NA
COLUMBIA DIVISION

FILED
Aug 11 1980
Miller C. Foster, Jr.,
CLERK
U.S. District Court

Annie Mary Timmons,

Plaintiff,

vs

Robert C. Andrews, et al.,

Defendants.

Civil Action No.
74-2049

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
O R D E R

This action was commenced on December 31, 1974, by the filing of a complaint seeking declaratory and injunctive relief against certain officials of the City of Columbia, South Carolina. Named as defendants were Columbia's mayor, its city manager, a housing rehabilitation officer, and the members of the city's Urban Rehabilitation Commission. Plaintiff challenges the constitutionality of certain actions taken under a city housing ordinance.

This Court originally dismissed the action, taking the position that it should abstain from deciding the

issue to allow it to proceed through the state court system. The Fourth Circuit reversed this decision, and remanded the case for further proceedings. Timmons v. Andrews, No. 75-1566 (4th Cir., May 4, 1976). On June 15, 1977, this Court again dismissed the action without prejudice on the grounds of failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Fourth Circuit again reversed. Timmons v. Andrews, No. 78-1253 (4th Cir., May 21, 1979).

The action came to be tried before this Court without a jury on July 28, 1980. At the commencement of the action, the plaintiff had been represented by an attorney; at the trial, however, she appeared pro se. Upon plaintiff's claims that the municipal regulation is unconstitutional, or, in the alternative, is not applicable to her property,[1] the Court makes the following

[1] At the trial there was a great deal of discussion of a variety of other issues. Plaintiff was apparently confusing the issues involved in this action with those involved in her related litigation. The state action is currently on appeal to the South Carolina Supreme Court.

FINDINGS OF FACT

1. When this suit was commenced, the Plaintiff was a resident of the state of Florida. The defendants constituted the Urban Rehabilitation Commission (Andrews, Williams, Tuller, Kirby and Thomas), the Housing Rehabilitation Officer (Winter), Mayor (Campbell), and the City Manager (Olive), all of the city of Columbia, South Carolina.

2. The plaintiff was and is the owner of certain real estate located at the following addresses in the city of Columbia:

1329 Calhoun Street

2920 Devine Street

3100 Duncan Street

3107 Heyward Street

3107 Heyward Street (rear)

3104 Monroe Street

208 Sims Avenue.

3. South Carolina Code §36-501 et seq. (1962) (now §31-15-20 et seq. (1976)) provides enabling legislation passed by the General Assembly of South Carolina

allowing municipalities with a population of more than five thousand persons to regulate by ordinance dwellings unfit for human habitation.

4. The City of Columbia has a population greater than 5,000 persons.

5. Section 17-1 et seq. of the Code of Ordinances for the City of Columbia was adopted to regulate housing for the city and, incorporates by reference, the "Southern Standard Housing Code."

6. South Carolina Code §14-400.581 (1962) (now §6-0-10 (1976)) provides enabling legislation passed by the General Assembly of South Carolina; this statute allows municipalities to adopt by reference the latest editions of certain codes for the regulation of housing.

7. One such authorized Code is the "Southern Standard Housing Code." South Carolina Code §14-400.586 (1962) (now §6-0-60 (1976)).

8. Pursuant to the enabling legislation, the City of Columbia, through its City Council, adopted the Southern Standard Housing Code as the standard to be

applied to housing regulations in the City of Columbia.

9. On April 24, 1974, the City Council of the City of Columbia amended §103. 2 of that Code. This section defines unsafe buildings, dwellings, apartment houses and rooming houses, and declares a procedure by which such structures may be declared unfit for human habitation, and under which the owner may be required to repair, alter, or improve the structure, or have it removed or demolished.

10. The plaintiff is the owner of a number of buildings, dwellings, apartment houses, or rooming houses which are located upon thos properties described in paragraph 2; these properties are governed by the Housing Code, including §103. 2, as amended.

11. Beginning in October of 1971, the Urban Rehabilitation Division of the City of Columbia received complaints from the Columbia Health Department and several neighbors charging that the plaintiff's dwellings were unsafe, unsanitary, and generally unfit for human habitation.

12. Based upon these complaints, and upon his own

motion, the Housing Rehabilitation Officer inspected the various properties of the plaintiff, with the exception of the Calhoun Street property.

13. These inspections of the plaintiff's properties revealed substandard conditions in violation of the Southern Standard Housing Code in numerous particulars.

14. The plaintiff was given notice in conformity with §103. 2 of the Southern Standard Housing Code that the plaintiff must repair the properties in question within 120 days or have them demolished.

15. Subsequently, on eight separate occasions, the Housing Rehabilitation Officer inspected some or all of the properties of the plaintiff. These inspections were conducted upon May 1, 1972 (all properties), July 5, 1972 (all properties), September 29, 1972 (Duncan Street and Heyward Street), October 10, 1972 (Calhoun Street), December 3, 1972 (all properties), February, 1974 (all properties), October 4, 1974 (all properties), and December 6, 1974 (all properties).

16. After each of the inspections set out above, the

Housing Rehabilitation Officer served the plaintiff with some kind of complaint in 1973 without any authority and one in 1974 quoting 103. 2 as authority and naming all the general parts of a bldg as needing repairs for each property with never a reference to altering the bldgs or zoning requirements and calling for repairs to non-existent conditions and order informing her of substandard conditions and requiring that repairs be made or the structures be removed or demolished.

17. During each of the inspections set out above, the Housing Rehabilitation Officer found numerous violations of the Southern Standard Housing Code. In addition, on the inspection of May 1, 1972, and all subsequent inspections, the Housing Rehabilitation Officer found all buildings were open, windows were broken and doors removed, rats and roaches were present inside the buildings, and mattresses stored in the buildings had been set afire.

18. After the complaint and order were served, following the October 28, 1971 inspection, a hearing was set for March 10, 1972, for the plaintiff to answer

the findings of the inspections. She did not appear for this hearing.

19. On August 30, 1972, water meters were removed from all of plaintiff's properties, except Monroe Street, for nonpayment of water bills.

20. On January 2, 1973, plaintiff's property at 2920 Devine Street was damaged by fire. On August 1 and August 15, 1974, the property located at 1329 Calhoun Street was damaged by fire.

21. On October 4, 1974, the Housing Rehabilitation Officer inspected the plaintiff's properties and found that no attempt had been made to comply with previous complaint notices. The buildings were found to be in violation of the Southern Standard Housing Code and unfit for human habitation.

22. A complaint notice was prepared and properly served upon the plaintiff. This notice ordered the plaintiff to repair or remove the structures before December 18, 1974, and notified her that failure to comply with this order would result in the structures being removed or demolished by the Housing Rehabili-

litation Officer's office. She was also notified that the amount of the cost of the removal or demolition would be a lien against the property affected.

23. On December 6, 1974, at the request of the plaintiff's attorney, the Housing Rehabilitation Officer again inspected the properties of the plaintiff and found that no work was in progress and none of the repairs made conformed to the standards or requirements submitted by the complaint notice and order in October, 1974.

24. On December 19, 1974, one day after all repairs or removals were to have been made, the Housing Rehabilitation Officer received a Notice of Appeal to the Urban Rehabilitation Commission (Housing Board of Appeals) on behalf of the plaintiff.

25. A hearing was held before the full Urban Rehabilitation Commission on December 30, 1974, the plaintiff being represented at said hearing by her attorney. After hearing the evidence, the Commission ruled unanimously that the dwellings violated the Housing Code and denied any further extension of time to

the plaintiff to comply with the complaint and order. The Commission approved action by the City to demolish the buildings and further provided that a lien for the costs of said demolition be placed against the property affected.

26. During the period of October 15, 1971, to December 30, 1974, the plaintiff was notified of the substandard condition of her buildings on numerous occasions and was notified that failure to repair would result in the buildings being demolished. The Plaintiff had ample opportunity to effect the repairs but failed to do so.

27. The plaintiff's dwellings were unsafe, unsanitary, unfit for human habitation, fire hazards, and generally dangerous to human life in October and December of 1974, by reason of inadequate maintenance, dilapidation, obsolescence and abandonment.

28. The defendants properly followed the procedures set out in the Southern Standard Housing Code for requiring repair or demolition of unsafe buildings. The plaintiff failed to comply with orders to

repair, remove or demolish and, absent a finding of inapplicability or unconstitutionality of the pertinent ordinances, the defendants are entitled to demolish the buildings, with the cost of said demolition as a lien against the property affected, pursuant to §103.2 (d and 3) of the Southern Standard Housing Code.

29. The plaintiff's complaint in this action does not contest the findings of the Housing Rehabilitation Officer and the Urban Rehabilitation Commission that the dwellings violated the Housing Code and were unfit for human habitation.

30. Section 17-1 of the Code of Ordinances for the City of Columbia, including the incorporated Southern Standard Housing Code, confers authority upon the defendants to demolish buildings in the City of Columbia under the circumstances set out in said code provisions.

31. Regulations and restrictions upon the manner which a property owner may use his property, when necessary for the general welfare, are properly a part of the police power of legislative bodies. Those provi-

sions of the Housing Code restricting unsafe buildings, etc., are reasonable and necessary to regulate housing for the general safety and welfare of the public.

32. The statutory scheme challenged in this action has been upheld as constitutional and a valid exercise of the police power in Richards v. City of Columbia, 227 S. C. 538, 88 S. E. 2d 683 (1955).

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.

2. The sole issues involved in this case are: whether the adoption of the provisions of the Southern Standard Housing Code by the City confers authority upon the defendants to condemn and demolish buildings within the city limits; whether any such authority applies to buildings not being used as residences; and whether demolition of a building found to be in violation of the city ordinance constitutes a taking without compensation in violation of the state and federal Constitutions.

3. The Housing Rehabilitation Officer found that the

properties of the plaintiff were unfit for human habitation, that the buildings were subject to the Housing Code, that repairs were not timely effected, and that the city was entitled to demolish the buildings pursuant to the applicable statutes. These findings of fact are supported by the evidence, and are conclusive, South Carolina Code §36-507.

4. The Urban Rehabilitation Commission likewise found that the plaintiff's buildings were subject to the Housing Code, were unfit for human habitation, were not repaired in a timely manner, and were subject to demolition. This action is not an appeal from those findings, but instead is an independent action for injunctive and declaratory relief based solely upon the nature and constitutionality of the Housing Code provisions.

5. The adoption by reference of certain codes by ordinance is allowed by South Carolina Code §14-400. 581 (now §6-9-10). The Southern Standard Housing Code was one such code. South Carolina Code §14-400. 586 (now §6-9-60).

6. Section 17-1 of the Code of Ordinances for the City of Columbia properly incorporates by reference the Southern Standard Housing Code.

7. The housing ordinances of the City of Columbia, including those incorporated from the Southern Standard Housing Code, confer upon the defendants and the City the authority to demolish buildings under certain circumstances set forth therein.

8. The buildings of the plaintiff were subject to the abovementioned housing ordinances and were subject to demolition if the plaintiff did not comply with the orders of the Housing Rehabilitation Officer.

9. The protection of the safety of persons individually and of those of the community collectively has traditionally been one of the uses of the police power of the states. Queenside Hill & Realty Co. v. SAxl, N.Y., 328 U.S. 80; Richards v. City of Columbia, 227 S.C. 538, 88 S.E. 2d 683 (1955). This protection applies also on the municipal level where, in the exercise of the police powers of the City, property which is a menace to public safety or health may be destroyed

without compensation when the destruction is necessary to protect the public. Richards v. City of Columbia, supra; Polsgrove v. Moss, 154 Ky. 408, 157 S. W. 1133 (1913); Kallifell v. St. Louis, 357 Mo. 986, 211 S. W. 2d 911 (1948); see generally Annot., 43 A. L. R. 3d 916 (1972). The protection of the public against substandard buildings which are a nuisance and hazard to the surrounding community can only be brought about by a police power promoting public safety through regulating or prohibiting such dangerous structures. Hollis v. Armour & Co., 190 S. C. 170, 2 S. E. 2d 681 (1939); Noble v. Carlton, 36 F. 2d 967 (S. D. Fla. 1930); U. S. v. Asker, 90 F. Supp. 257 (D. C. Mo. 1950). The building does not have to be declared a nuisance per se to be clearly within the police power of a state or municipality. Hadacheck v. Sebastian, 239 U. S. 394 (1915). For example, it has been held that fire hazards, although not declared to be nuisances per se, can be abated or suppressed under the police power. Reiman v. Little Rock, 237 U. S. 171 (1914).

10. Article I, Sec. 17 of the South Carolina Constitution provides that "private property shall not be taken for public use without the consent of the owner, nor for public use without just compensation being first made therefore." But several South Carolina cases have held that no such compensation is allowed for a loss by the property owner which results from the constitutional and legitimate exercise of the police power. Edens v. Columbia, 228 S.C. 563, 91 S.E. 2d 280 (1956); Richards v. City of Columbia, supra; James v. Greenville, 227 S.C. 565, 88 S.E. 2d 661 (1955).

11. Several courts have held that the constitutional requirement that compensation be paid for any property taken or applied to public use has no relation to property destroyed under the police power as a nuisance to health or safety of the community. Theilan v. Porter, 14 Lea 622 (Tenn. 1885); Jackson v. Bell, 143 Tenn. 452, 226 S.W. 207 (1920). Public welfare calls for the abatement of that which endangers life and property. Such abatement is not in any sense a

taking of private property for public use, entitling the owner to compensation. State Fire Marshal v. Sherman, 201 Minn. 594, 277 N.W. 249. With the rights of ownership of property come the responsibilities to hold and maintain that property in a lawful manner without subjecting the surrounding community to a nuisance or hazard. Every individual holds his property, whether personal or real, subject to the power of destruction by public authorities if it shall become a public nuisance. Maxedon v. Rendigs, 9 Ohio App. 60 (1917). For example, the destruction of a building for circumstances of age and defects making it a fire hazard. judicial process having been provided for, was found to not be a taking for public use without compensation in York v. Hargardine, 142 Minn. 219, 171 N.W. 773 (1919).

12. In Richards v. City of Columbia, 227 S.C. 538, 88 S.E. 2d 683 (1955), the Court reviewed the question, which had essentially the same provisions, involved an impermissible taking of property for public use and without compensation, in violation of

the state constitution. In upholding the constitutionality of the ordinance, the Court observed that:

> Secondly, it is contended that the ordinance authorizes the taking and destruction of appellants' property for public use without just compensation being first made therefor. This has reference to section 17 of article 1 of the State Constitution. As indicated in authorities cited supra, detriment to private property which results from legitimate exercise of the police power does not constitute the taking of it for public use. "All property is held subject to reasonable regulation by the State. A prohibition simply upon the use of property in a manner injurious to the health, morals or safety of the community cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit. *** The power which the states have of prohibiting such use by individuals of their property as will be prejudicial to the health, morals, or safety of the public is not burdened with the condition that the state must compensate such individual owners for pecuniary losses they may sustain by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community. Although such regulations may sometimes occasion inconvenience to an individual, he is deemed to have compensation in participating in the general advantage." 12 Am Jur. 371, 372, Constitutional Law, Sec. 696. "The power of government to regulate extends to almost limitless fields. ***Burdens and expenses of various types may be imposed under

the exercise of the police power without compensation and without in any way violating the constitutional guaranties as to due process of law." Ibid., Sec. 684, p. 365. at page 690.

13. Unconstitutionality is found only when it appears beyond a reasonable doubt. Richards v. City of Columbia, supra.

14. The Court concludes that the ordinances of the City of Columbia which require owners of structures deemed unfit for human habitation to repair, remove, or demolish said structures, and which allows the City to remove or demolish the structure if the owner fails to respond, are reasonable exercises of the police power calculated to protect the health and safety of tis citizens.

15. The Court finds that demolition of a structure pursuant to the ordinances described above does not constitute a taking of property without compensation and that said ordinances do not violate the State or Federal Constitutions on that ground.

16. The plaintiff has presented no evidence on which injunctive relief will lie and, therefore, the

plaintiff's request for such relief is denied.

IT IS, THEREFORE, ORDERED that judgment be entered for the defendants.

AND IT IS SO ORDERED.

/s/ Robert F. Chapman
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

August 8th, 1980

Columbia, South Carolina

TRUE COPY:
TEST:
Miller C. Foster, Jr., Clerk

/s/Mary Lynn Phipps...
by: Deputy Clerk

24

ENTERED
8-12-80

Judgment On Decision By The Court

ORIGINAL FILED
Aug 12 1980
Miller C. Foster, Jr.,
CLERK

UNITED STATES DISTRICT COURT

for the

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Civil Action File No. 74-2049-9

ANNIE MARY TIMMONS)
)
vs.) JUDGMENT
)
ROBERT C. ANDREWS, D. REESE)
WILLIAMS, WILLIAM H. TULLER,)
GROVER C. KIRBY, CHARLES H.)
THOMAS, JOE E. WINTER, JOHN T.)
CAMPBELL AND GRAYDON V. OLIVE)

This action came on for trial before the Court, Honorable Robert F. Chapman, United States District Judge, presiding, and the issues having been duly tried and a decision have been duly rendered,

It is Ordered and Adjudged that Judgment is hereby entered for the defendants, and the action is hereby dismissed.

Dated at Columbia, South Carolina, this 12th day of August, 1980.

(SEAL) MILLER C. FOSTER, JR.
Clerk of Court

/s/ Mary Lynn Phipps
Mary Lynn Phipps
Deputy Clerk

The Truth about The District Court Findings

Laws which have been overlooked by the Court together with apparent conflict of this decision with others made by the Court.

1. The Judge presented no proof to uphold his opinion.

2. All actions of Appellees against Appellant were violations of laws.

3. Appellees presented no evidence at all.

4. The integrity of the Court is at stake.

I. A Decision of this Honorable Court affirming "the judgment below on the reasoning of the District Court" is in reality tantamount to affirmance of a ruling based only upon shocking violation of State and Constitutional laws, statements concerning irrelevant, immaterial, inapplicable matters, seemingly deliberate misapplications of laws and facts, and downright untruths. Such a decision certainly calls for a Re-Hearing and for the good of all it must not stand. Here are the "Highlights" of the Court's Opinions:

FINDINGS OF FACT

Numbers	Words verbatim from findings & conclusions	Truth about each
(1 & 2)	"Identifies litigants and properties"	
3	"Enabling legislation"	not an issue
4	"population"	immaterial here
5	"adopted Southern Standard Housing Code"	not an issue
6	"enabling legislation"	not an issue
7	"Southern Housing Code"	not an issue
8	"Adopted Southern Standard Housing Code"	not an issue
9	"Amended 103. 2---declares procedure for human habitation"	True
10	"Buildings governed by Housing Code 103. 2 as amended"	False--bldgs condemned 4yrs. prior to passage
11	"Received complaints--unfit for habitation"	False
12	"Rehab Officer Inspected"	not an issue
13	"Substandard condition"	False
14	"Given Notice" and "Repair in 120 days"	Lie
15	"8 separate occasions inspected"	Irrelevant after condemnation in 1971

Numbers	Words verbatim from findings & conclusions	Truth about each
16	"After inspections served complaints"	Irrelevant & false
17	"All bldgs open--doors & windows removed--rats roaches"	lie
18	"Hearing set for Mar. 10, 1972"	Irrelevant--condemnation in 1971
19	"water meters removed"	not an issue and not established
20	"2920 Devine - 1329 Calhoun damaged by fire"	Issue only by being deliberately set & costly
21	"Oct. 4, 1974--no attempt had been made to comply"	Untrue
22	"found to be in violation--and unfit for human habitation"	Impossible without complaint, hearing & evaluation in writing
23	"Dec. 6, 1974 found that none of repairs conformed to the standards"	Lie--there were no repairs, workmen in danger without permits & more than 100 attempts to secure

Numbers	Words verbatim from findings & conclusions	Truth about each
		permits failed
24	"notice of appeal---on behalf of plaintiff--"	Irrelevant because condemnation had been over for more than 3 yrs and bldgs deliberately & constantly damaged
25	"After hearing the evidence" "provided that lien be placed---"	False--a rubber stamp vote without hearing evidence
26	"Ample opportunity to effect repairs"	The joke of the century. After the posting of condemnation signs the law prohibited her from touching them
	"the plaintiff was notified of substandard condition"	not an issue after condemnation & untrue
27	"dwellings unsafe, unsanitary, unfit for human habitation Oct & Dec of 1974"	Lie at that time
28	"Followed procedure in the Southern Housing Code"	False
	"Failed to comply with orders"	No valid orders or compliance possible where condemnation

Numbers	Words verbatim from findings & conclusions	Truth about each
		occurred 4 yrs before & bldgs under control of official destroying them constantly
	"Defendants entitled to demolish"	A tragic & criminal decision
29	"Complaint does not contest findings"	False, The complaint covers all the "unlawful" acts of which these proceedings are made. Complaint shows that there was no unfitness established.
30	"Standard Housing Code confers authority to demolish under the circumstances set out in the Code"	True, but these are not the circumstances set out.
31	"Restrictions upon the manner in which a property owner may use his property are a part of the police power"	The function of police power is to protect property used legitimately & not to destroy and steal property as this decision upholds.
32	Valid exercise of police power on Richard case.	False

CONCLUSIONS OF LAW

Numbers Sec.	Words verbatim from conclusions	Truth about each
1	(Court has jurisdiction)	
2	"Sole issues"	False because incomplete. Real issues are: unconstitutionality of Ord., unlawful taking, Ord. inapplicable.
3	"Unfit for human habitation"	False--the official cannot legally declare "unfitness" until after Complaint, Notice, Hearing, etc., all of which he omitted from the law.
	"Findings supported by evidence"	False. There was not a scintilla of evidence supporting decision.
	"Entitled to demolish"	False. The laws prohibit demolition.
	"Repairs not timely effected"	No repairs at all because officials refused to issue repair permits

Numbers Sec.	Words verbatim from conclusions	Truth about each
		and the danger of foul play to people.
4	"Unfit, not repaired, and subject to demolition"	False & repetitious.
5	"Adoption of Codes"	Irrelevant here
6	"Incorporates Code"	Irrelevant & repetitious.
7	"Code confers authority"	Repetitious & irrelevant.
8	"Bldgs subject to Ordinances"	Repetitious & irrelevant.
9	"Property destroyed without compensation" "Richards v. City of Columbia"	False comparison. The two cases are incomparable in every respect & a forced comparison without any right to precedence is obnoxious. Richards properties: A group of shacks without any plumbing or conveniences. The Richards case is cited over & over because Appellees try to force it into precedency. In one instance

Numbers Sec.	Words verbatim from conclusions	Truth about each
		Counsel quoted and talks about the Richards case 7 times. The instant case has no precedent and deserves to be heard.
10	"Private property shall not be taken for public use without compensation" "Police power"	True. Police power cannot be misused to confiscate property.
11	"Police power" "No compensation if property endangers life"	Repetitious. Compensation due if police power misused.
12	"Richards v. City of Columbia same provisions"	False & repetitious. It is pathetic that the Court has no substantiation for decision and must create a false precedent.
13	"Unconstitutionality" (Richards v. City of Columbia)	Repetitious Inapplicable
14	"Police power"	Repetitious.
15	"Demolition not a taking without compensation"	Repetitious & false.
16	"Plainly presented no evidence"	Repetitious & untrue. Almost any page of

Numbers Sec.	Words verbatim from conclusions	Truth about each
		the 361 Apr 15, 1981 MOTION for Summary Reversal and/or the testimony except for deletions and inaccuracies.

II. A Citizen of this country cannot be deprived of property rights without Due Process of Law. This Appellant and every citizen of this country is entitled to have his or her rights to due process upheld by the Courts.

Annie Mary Timmons

Sworn to on this 17th day, July, 1982

Calhoun SC
Velma C Johnson

My Commission Expires December 4, 1989

STATE OF SOUTH CAROLINA)
) IN THE RICHLAND
COUNTY OF RICHLAND) COUNTY COURT

Annie Mary Timmons,)
Plaintiff,) TEMPORARY
vs.) RESTRAINING
John T. Campbell, Graydon V.) ORDER AND RULE
Olive, James E. Altman, Joe) TO SHOW CAUSE
E. Winter, H. R. Montgomery,)
and the City of Columbia,) 76 CL 40 6919
Defendants.)

- - - - - - - - - - - - -

TO: ANNIE MARY TIMMONS

It appearing from the verified Petition and the affidavit attached thereto that the Respondent is making or causing to be made certain repairs on the structures contained on her properties, without first obtaining such permits as are required by provisions of the City of Columbia Code of Ordinances, and

It further appearing that Petitioners are, by Order of this Court, restrained until a hearing may be held from actions against the Respondent.

IT IS THEREFORE ORDERED that the Respondent herein show cause before me at Chambers in the Richland County Courthouse on the 10th day of February, 1978, at 9:00 o'clock A. M., why the temporary relief

prayed for in the Petition should not be granted and it is further

ORDERED that the Respondent be and she is hereby temporarily restrained from making or causing to be made any repairs in violation of City ordinances pending a hearing and decision in this matter.

AND IT IS SO ORDERED.

/s/ Donald D. Aaron
SPECIAL JUDGE
Richland County Court

Columbia, South Carolina

Jan. 23, 1978.

THE STATE May 10, 1979

Comprehensive Housing Policy Sought For City

Sir:

Jean Geddings' May 1 letter was concerned with my comment that Section 8 housing should be provided in low density clusters throughout the city, including the Shandon neighborhood.

Ms. Geddings suggested certain property located at the corner of Heyward and Sims streets in Shandon as a suitable location for Section 8 housing. This specific location was considered for Section 8 housing last year. However, the property is owned by Ms. Annie Mae Timmons, who has repeatedly demonstrated an unwillingness to sell any of her extensive land holdings in the area. In fact, she has fought efforts by the city to clean up her property, with litigation still tied up in federal court.

I have prepared a position paper advocating a comprehensive housing policy for Columbia. Site selection and density criteria for low income housing are an integral part of the proposed housing policy,

and the policy emphasizes the relationship between decent low-income housing and the stability of property values.

People concerned about Columbia's housing policy should be aware that we are attempting to develop a housing policy designed to improve the quality of low income housing, revitalize our older neighborhoods and preserve our better neighborhoods.

RUDY BARNES JR.

2400 Wheat St.
Columbia

The writer is a city of Columbia councilman.

--The Editors

A City Councilman's letter to the Editor of THE STATE newspaper May 10, 1979 states in black and white a likely cause for the condemnation of at least one of the most valuable parcels herein involved, reveals secret plans of long-making to use this property, magnificent before illegal control and destruction by the city, for Sec. 8 housing, and misleads the reader into believing that the owner owed her hard-earned property to the city for some reason, that she had full knowledge of council's thinking concerning her properties and had received offers from the city for the purchase of this one when in truth she had never been offered one penny for it while years were spent in persecutive actions against her for the purpose of obtaining free control and ultimate possession no matter how criminal a path was necessary for the accomplishment of that goal. In the opinion of the owner this innocent little statement was an attempt to establish the motive of housing in lieu of the true motive GREED. This action has been a tremendous blow to the cause of housing.

This short belated public statement and inadvertant confession of the motive for possession of this desirable property was not deleted as to what was said concerning Sec. 8 housing (all other truths had been constantly disallowed throughout the long fraudulent condemnation) perhaps because it occurred in a letter to the Editor and was written by a city councilman.

Even that short statement like all other publications concerning the condemnation of these properties grossly misrepresented the owner making her appear to be a very bad citizen and owner who refused to repair her properties and aroused the false conception that the city had given her every consideration by referring to the "efforts to clean up her property."

On the contrary, she had received absolutely nothing from the city except deprivation of the hard-earned 72 rental units (these were all that were left after the confiscation of her 163 hotel-apartment units and restaurant complex by the temporary state tricentennial commission with the help of the same city law-breaking Rehab Official somewhat interferred with by _

the owner's injunction against one gov't agency using its power to carry out the function of another), her total income from same, her home, business, and health, leaving her with nothing except liens against all her properties through which the official planned to gain complete possession of her real properties by charges for schemed demolition.

He slyly insinuates that the owner is on the criminal side because "she has fought efforts of the city to clean up her property with litigation still tied up in federal court." He neglected to mention that it was the city's full control of these properties since the Rehab Official's illegal, unconstitutional posting of condemnation signs in 1971 without due process of law that damaged them and made the city responsible for their state of destruction, that the owner was barred from using, repairing, or touching them except for the purpose of demolition, and that any "litigation in federal court" was and is the owner's only hope of saving her properties from official unconstitutional taking and destruction without due process.

Mr. Barnes failed to explain to the Editor that the owner had sacrificed her life's work, her hard-earned fortune, her means and manner of living, her health, her very life's blood opposing efforts by the city to destroy her properties and not "to clean up her property" as stated, and fighting for her and all owners' property rights to use, enjoy, protect, repair, keep in excellent condition for use for the purpose legally built and protecting them always with eternal vigilance from criminal control and possession through unconstitutional condemnation devoid of due process, back-door damages, prevention from repair by the misuse of police power, and final demolition. All these facts have been carefully withheld from the public for years, while false propaganda was substituted in lieu thereof.

The councilman must also have momentarily forgotten that the founding of our country was the direct result of the determined search by free men for liberty and justice and the revolt against dictatorial persecution scarcely as inhuman, unjust, ungodly, and cruel as the crimes committed against the property

owner in the instant case.

It didn't occur to him either that many have failed to survive like injustice or have been completely crushed and that thousands will lose their property rights so emphatically secured by the constitution and that spirit which made and keeps America great unless the people fight continually to preserve and exercise their constitutional rights and unless the court's of justice fulfill their function to defend and protect the Supreme Court of the land, The Constitution of the United States.

Anna Mary Timmons

Sworn to on this 17th day, July 1982

Calumet, LC

Helen C Johnson

My Commission Expires December 4, 1989

From USCA 80-1561

42 A

Constitutional Amendment and Articles

Which Have Been Violated by this Condemnation - p.170-171

CONSTITUTIONAL AMENDMENTS

AMENDMENT III

Quartering of Soldiers

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

Security from Unwarrentable Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

Rights of Accused in Criminal Proceedings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor

CONSTITUTIONAL AMENDMENTS

shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

Right to Speedy Trial, Witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VII

Trial by Jury in Civil Cases

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise Re-Examined in any Court of the U.S. than According to the Rules of the Common Law.

Article I Sec 9

"No Bill of Attainder or ex post facto Law shall be passed."

Article I Sec 10

"No state shall --- pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts ---"

~~Article III Sec 2~~

"The Trial of all Crimes, except in cases of impeachment, shall be by Jury---"

Article VI

"This Constitution --- shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding ---"

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AMENDMENT VIII

Bails, Fines, Punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

AMENDMENT XIII

SECTION 1

Abolition of Slavery

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2

Power to Enforce This Article

Congress shall have power to enforce this article by appropriate legislation.*

AMENDMENT XIV

SECTION 1

Citizenship Rights Not to Be Abridged by States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Proposed by Congress on January 31, 1865; declared ratified on December 18, 1865.

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From USCA 80-1561 44

12 City Ordinances prohibiting Zoning from this case

ARTICLE 5

GENERAL REGULATIONS

5-1 NONCONFORMING USES

Within the districts established by this Ordinance, or by amendments which may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited or regulated and restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, reconstructed to continue nonconformity after major damage, or used as grounds for adding other structures or uses prohibited elsewhere in the same district.

5-2 CONTINUANCE OF NONCONFORMING USES, STRUCTURES, OR CHARACTERISTICS OF USE

5-2.1 Change to Another Nonconforming Use: A nonconforming use, structure, or characteristic of use shall not be changed to any other nonconforming use, structure, or characteristic of use unless the Zoning Board of Adjustment finds that the new use, structure, or characteristic of use is more in character with the uses permitted in the district, in which case the Zoning Board of Adjustment may permit such change as a special exception. In permitting such change, the Zoning Board of Adjustment may require appropriate conditions and safeguards in accord with the purpose of this Ordinance.

5-2.2 Conversion of Use on Nonconforming Lots: The minimum yard requirements of this Ordinance shall not be construed as prohibiting the conversion of an existing building which does not meet the minimum yard requirements to another permitted use, so long as no further encroachment is made into the existing yards.

5-2.3 Reconstruction: A nonconforming structure shall not be demolished and rebuilt as a nonconforming structure.

5-2.4 Extension or Enlargement: A nonconforming use, structure or characteristic of use shall not be extended, enlarged, or intensified except in conformity with this Ordinance, provided however, that any nonconforming use may be extended

6-6.2 PERMITTED PRINCIPAL USES AND STRUCTURES

(1) Retail establishments
(2) Service and repair establishments, except automobile service stations
(3) Personal service establishments including such uses as beauty shops, barber shops, shoe repair shops, dry cleaning and laundry, dressmaking and tailoring
(4) Offices
(5) Photography studios, art studios, art galleries, art sales, interior design studios, craft studios, craft sales, antique shops, establishments for the teaching of music, dancing or other performing arts
(6) Financial institutions
(7) Eating and drinking establishments, except drive-in eating and drinking establishments
(8) Wholesaling and distribution establishments not involving over 2,000 square feet of area for storage of wares to be wholesaled or distributed
(9) Commercial recreation and entertainment structures and uses, such as theaters, bowling alleys, miniature golf courses, night clubs, and the like
(10) Hotels and motels
(11) Commercial parking lots and parking garages
(12) Commercial printing and job printing establishments

6-6.1 (Page 172)

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From USCA 80-1561

throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.

5-2.5 Reestablishment: A nonconforming use, or characteristic of use, shall not be reestablished after vacancy, abandonment, or discontinuance for any period of twelve (12) consecutive months, except where Section 5-2.6 applies.

5-2.6 Reconstruction After Damage: A nonconforming structure shall not be rebuilt, altered, or repaired except in conformity with this Ordinance after sustaining damage exceeding seventy-five (75%) percent of the replacement cost of the structure at the time of damage, provided that any permitted reconstruction shall begin within twelve (12) months from the time of damage and shall be completed within six (6) months after the issuance of a building permit.

5-3 REPAIR OR MAINTENANCE OF NONCONFORMING STRUCTURES

On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

5-4 NONCONFORMING LOTS OF RECORD

5-4.1 Single Lots: In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

5-4.2 Adjoining Lots: If two or more adjoining lots with continuous frontage are in a single ownership at any time after the adoption or amendment of this Ordinance and such lots individually are too small to meet the yard, width, or area requirements

Note: Continued Non-conforming uses of these properties is secured by Ord. 5-1, 5-2, 5-2.3, 5-2.4, 6-6.2, 5-2.5 5-2.6; 5-3, 10-2 and 10-3.1.

The ZA forgot the case under zoning violated 10 zoning laws denied that appellant was denied use of all her properties because of cessation of nonconformity. 5-2.5 invalid:

(1) He ignored the last 5 words "Except Where 5-2.6 applies" Notice allowed her right to repair unless damage was in excess of 75% of replacement cost

(2) He misread vested as synonymity of 3 words joined by "or" & "and" & "use" ruling on 100's of Court cases

(3) He used 5-2.5 as Expert-Plato Law adopted in 1974 about 3 yrs. after the condemnation of 1971.

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ARTICLE 10

ADMINISTRATION, ENFORCEMENT, AND PENALTIES

10-1 RESPONSIBILITY FOR ADMINISTRATION

A Zoning Administrator designated by the City Manager shall administer and enforce this Ordinance. The Zoning Administrator may be provided with the assistance of such other persons as the City Manager may direct. It is the intent of this Ordinance that all questions of administration and enforcement shall first be presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only upon reference by, or appeal from, the Zoning Administrator, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by law.

It is further the intent of this Ordinance that the function of the City Council under this Ordinance shall not include hearing and deciding questions of interpretation and enforcement which may arise, but that the City Council shall have only the responsibility for acting on proposals for amendment or repeal of this Ordinance, and for establishing a schedule of fees and charges as herein provided.

10-2 DUTIES OF THE ZONING ADMINISTRATOR

The duties of the Zoning Administrator shall include:

a. Interpretation of the terms and provisions of this Ordinance,
b. Administration of the provisions of this Ordinance relating to Zoning Permits and Certificates of Zoning Compliance,
c. Administration of the provisions of this Ordinance relating to applications for special exceptions, variances, appeals from an administrative decision and other actions before the Zoning Board of Adjustment,
d. Administration of the provisions of this Ordinance relating to applications for zoning amendments, the presentation of same to the Planning Commission and City Council, and giving notice of hearings on such amendment requests as specified herein,
e. The receipt of complaints from persons who allege that violations of this Ordinance have occurred, to properly investigate or cause to be investigated such complaints, and to initiate or cause to be initiated action to prevent, enjoin, abate, or remove such violations,
f. The maintenance of the official copy of the Zoning Map and other such records and official materials as may relate to the adoption, amendment, enforcement or administration of this Ordinance,
g. Other such duties as may properly relate to the accomplishment of the spirit and intent of this Ordinance.

10-3 ZONING PERMITS

10-3.1 Zoning Permits Required: No building or other structure shall be erected, moved, added to or structurally altered without a zoning permit therefor issued by the Zoning Administrator. A zoning permit shall not be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance, unless he receives a written order from the Board of Adjustment in the form of an interpretation involving error or a special exception or variance as provided in Article 11. If the permit is denied, reasons shall be stated for the denial.

Note: 10-2 gives all the ZA's duties in detail and explicitly omits requiring 10-3 rules that the ZA is not involved with permits unless a req. is to be a erected, moved, added to or structurally altered ... 1750
(Proc. 19th)

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ORDINANCE

TO AMEND THE CODE OF ORDINANCES OF THE CITY OF COLUMBIA AND THE SOUTHERN STANDARD HOUSING CODE

BE IT ORDAINED by the City Council of The City of Columbia, South Carolina, this 24th day of April, 1974, that the Code of Ordinances of the City of Columbia, South Carolina, Chapter 17, Housing, is amended by adding to Sec. 17-2 "Amendments" the following date: April 24, 1974.

BE IT FURTHER ORDAINED by the City Council of The City of Columbia, South Carolina, that the southern standard housing Code(1969 Edition) is amended as follows:

1. By repealing Ordinance 72-23, dated September 8, 1972.

2. By deleting Section 103.2 and inserting in lieu thereof the following:

103.2 UNSAFE BUILDINGS, DWELLINGS, APARTMENT HOUSES, AND ROOMING HOUSES

All dwellings, apartment houses, rooming houses, or buildings or structures used as such, which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitutes a fire hazard, or are otherwise dangerous to human life, or which in relation to the existing use constitute a hazard to safety or health, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are severally in contemplation of this section, unsafe buildings. All such unsafe buildings are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the following procedure.

(a) Whenever a petition is filed with the Housing Rehabilitation office by a public authority, or by at least five residents of the municipality, charging that any dwelling is unfit for human habitation, or whenever it appears to the Housing Rehabilitation Official on his own motion that any dwelling is unfit for human habitation the Housing Rehabilitation Official shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and all parties in interest in such dwelling, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Housing Rehabilitation Official at a place therein fixed not less than ten (10) days, nor more than thirty (30) days after the

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serving of such complaint. That the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint and that the rules of evidence prevailing in Courts of Law or Equity shall not be controlling in hearing before the Rehabilitation Official.

(b) If, after such notice and hearing, the Housing Rehabilitation Official determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an Order.

(c) If the owner fails to comply with an Order to repair, alter, improve, or to vacate and close the dwelling, the Housing Rehabilitation Official may cause such dwelling to be repaired, altered, or improved, cause to be posted on the main entrance of any dwelling so closed a placard with the following words: "THIS BUILDING IS UNFIT FOR HUMAN HABITATION: THE USE OR OCCUPATION OF THIS BUILDING FOR HUMAN HABITATION IS PROHIBITED AND UNLAWFUL."

(d) If the owner fails to comply with an Order to remove or demolish the dwelling, the Housing Rehabilitation Official may cause such dwelling to be removed or demolished; and

(e) The amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the Housing Rehabilitation office shall be a lien against the real property upon which such cost was incurred.

(f) Complaints or Orders issued by the Housing Rehabilitation Official pursuant to this Code shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and cannot be ascertained by the Rehabilitation Official in the exercise of reasonable diligence and the Rehabilitation Official shall make an affidavit to that effect, then the serving of such Complaint or Order upon such persons may be made by publishing it once each week for two consecutive weeks in a newspaper printed and published in the City. A copy of such Complaint or Order shall be posted in a conspicuous place on the premises affected by the Complaint or Order. A copy of such Complaint or Order shall also be filed with the Richland County Clerk of Court and such filing of the Complaint or Order shall have the same force and effect as other lis pendens notices provided by law.

From USCA
BO-1561

Note: See Unconstitutional Statutes 31-15-30 and §31-15-50

31-15-70

(Corresponding to section Code 36-503 and 36-507)

UNFIT DWELLINGS

65 CJS, Municipal Corporations § 777.
Habitability in Slum Leases. 20 SC L Rev 282.

ALR and L Ed Annotations—
Constitutional rights of owner as against destruction of building by public authorities. 14 ALR2d 75.

CASE NOTES

The courts will not interfere with the enforcement of municipal building regulations unless they are determined to be unreasonable. Richards v. Columbia, 227 SC 330, 88 SE2d 525 (1955).

Ordinance held constitutional.—An ordinance enacted pursuant to this chapter to provide for repair or demolition of unfit dwellings held not to permit the taking of property of owners of dwellings without due process or to deny to the owners the equal protection of the law. Richards v. Columbia, 227 SC 330, 88 SE2d 525 (1955).

Nor did the ordinance authorize the taking and destruction of the dwelling owners' property for public use without just compensation being first made therefor. Richards v. Columbia, 227 SC 330, 88 SE2d 525 (1955).

The constitutional prohibition against laws impairing the obligations of contracts was not violated by such ordinances, and the contention that in the supposed case of a mortgage upon a substandard dwelling the obligation of it would be impaired was without merit. Richards v. Columbia, 227 SC 330, 88 SE2d 525 (1955).

And the ordinance did not violate Art. I, § 10 of the Issue Commission, which imposes upon the General Assembly the duty to ensure boards of health, as the ordinance was expressly cumulative to other existing applicable statutes and ordinances. Richards v. Columbia, 227 SC 330, 88 SE2d 525 (1955).

All 3 Case Notes = The Richards Case

Unconstitutional Statute

§ 31-15-30. Provisions permitted to be included in ordinances relating to unfit dwellings.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in § 31-15-30 exist within a municipality, the governing body of such municipality may adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances may include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances;

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and all parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer or his designated agents at a place therein fixed

See p 107-09

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not less than ten days nor more than thirty days after the serving of such complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling;

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful";

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished; and

(6) That the amounts of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred.

HISTORY: 1967 Code § 36-503; 1967 Code § 36-503; 1942 Code § 3271-53; 1930 (43) 547; 1945 (44) 186; 1964 (53) 1710.

Research and Practice References—
15 Am Jur 2d, Buildings §§ 3, 5 et seq.

From USCA 80-1861

unconstitutional statute

Supp. 1K

§ 31-15-70. Rights of persons affected by orders.

Any person affected by an order issued by a public officer may within sixty days after the posting and service of the order petition the circuit court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause. Hearings shall be had by the court on such petitions within twenty days or as soon thereafter as possible and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer or because of compliance by such person with any order of the public officer.

Why employ the guise of a Court hearing?

HISTORY: 1962 Code § 36-507; 1952 Code § 36-507; 1942 Code § 5271-66; 1939 (41) 347; 1945 (44) 158.

Research and Practice References—

42 Am Jur 2d, Injunctions §§ 22, 38.

43 CJS, Injunctions § 11.

5 Am Jur Pl & Pr Forms (Rev ed), Buildings, Form 14 (judgment or decree allowing order requiring abatement of fire hazard).

14 Am Jur Pl & Pr Forms (Rev ed), Injunctions, Form 1 (complaint, petition, or declaration for permanent injunction seeking temporary restraining order and preliminary injunction).

14 Am Jur Pl & Pr Forms (Rev ed), Injunctions, Form 21 (temporary restraining order).

14 Am Jur Pl & Pr Forms (Rev ed), Injunctions, Forms 51 et seq. (permanent injunctions).

ALR and L Ed Annotations—

Appealability of order granting, extending, or refusing to dissolve temporary restraining order. 19 ALR3d 485.

Appealability of order refusing to grant or dissolving temporary restraining order. 19 ALR3d 450.

CASE NOTES

Provision as to conclusiveness of officer's findings is unobjectionable.—There is nothing novel or objectionable in the provision of this section (Code 1962 § 36-507) which governs appeals to the courts, that in all such proceedings the findings of the public officer as to the facts, if supported by evidence, shall be conclusive. Richards v. Columbia, 227 SC 338, 88 SE2d 683 (1955).

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violation to the person or persons responsible therefor or if such alleged violation shall constitute a nuisance. Such notice shall:

1. Be put in writing;
2. Include a statement of the reasons why it is being issued;
3. Allow one hundred twenty (120) days time for the performance of any act it requires;
4. Said notice shall further state that, if such repairs, reconstruction, alterations, removal or demolition are not voluntarily completed within the stated time as set forth in the notice, the Housing Official shall institute such legal proceedings charging the person or persons, firm, corporation, or agent with a violation of this code.

(b) Service of notice shall be as follows:

1. By delivery to the owner personally, or by leaving the notice at the usual place of abode of the owner with a person of suitable age and discretion; or
2. By depositing the notice in the United States Post Office addressed to the owner at his last known address with postage prepaid thereon; or
3. By posting and keeping posted for twenty-four (24) hours a copy of the notice in a conspicuous place on the premises to be repaired.

(c) When a residential building is to be demolished, it shall be done so in accordance with the provisions of the Standard Code for the Elimination or Repair of Unsafe Buildings, 1977.

1913 — REQUIREMENTS NOT COVERED BY CODE

Any requirement, not specifically covered by this Code, found necessary for the safety, health, and general welfare of the occupants of any dwelling, shall be determined by the Housing Official subject to appeal to the Housing Board of Adjustments and Appeals.

1914 — LIABILITY

Any officer or employee, or member of the Housing Board of Adjustments and Appeals, charged with the enforcement of this Code, in the discharge of his duties, shall not thereby render himself liable personally, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of

0/979 Ord. 103.2 (a.3)

Note: This Ord. allows 120 days for performance of any Act after service of Complaint and prior to possible condemnation. If "any Act" can be interpreted as an entire living unit, 72 living units would take too much time. Even if each Bldg, whether it contains 2 or 30 units, were considered an act, the least amount of time that could be required would be 8640 days with the understanding that a shorter period could probably accomplish the job. That amount of time might be sufficient or might be far more than necessary but is the lowest limit that could be required.

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property for business purposes as a non-conforming use. The landowner had become ill. The city contended that the non-conforming use had been abandoned. The Court restored the non-conformity of the entire tract."

A declaratory judgment was sought in the case of Connor vs. Chanhausen (1957) 249 Minn. 30581 N.W. 2d 789 to prevent continuance of a non-conformity use after a partial condemnation by the State. The business had a right to continue despite the forced lengthy cessation beyond the owner's control.

In the case of Crandon v. Smith, (1946), 158 Fla. 133, 28 So. 2d 159, American Law of Zoning 6.61 (1968 Edition) operation of an airport was discontinued in 1942 by order of the CAA. After the war the owner attempted to reopen. The Court ruled that the use was still non-conforming. The Court said that the Zoning Law was "inapplicable where the non-conforming use of the property for an airport had been interrupted by virtue of a superior authority and where the interruption had been in every sense involuntary .... The airport owner had no choice but to cease using the property ...."

Cases with Table of Authorities

This owner's intent and all her overt actions including attempts to get repair permits directly and through Court action all prove her purpose to repair and continue non-conforming use.

Other Cases in Support of Continued Non-Conforming Uses

Cases (Not in alphabetical order)

Green v. Copeland (1970) 286 Ala. 341, 239 So. 2d. 770

Brown v. Gambrell (1948) 158 Mo. 192, 213 S.W. 2d. 1931

Dorman v. Baltimore (1947) 187 Md. 678, 51 A. 2d. 658

Haulenbeck v. Allenhurst (1948) 126 N.J.L. 557, 57 A. 2d. 52

Connor v. Chanhassen (1957) 249 Minn. 205, 81 N.W. 2d. 789

West Mifflin v. Zoning Hearing Board (1971) 2 Pa. Cmwlth 485, 284, A. 2d. 320

Rudnik v. Mayers (1972) 387, 379, 196 N.W. 2d. 770

Smith v. Howard (1966) Ky. 407 S.W. 2d. 139, 96 A.L.R. 3d.

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Conway v. Greenville, S.C., 173 S.E. 2d. 650 (1970)

Binghamton v. Gartell (1949) 275 App. D.W. 457, 90 N.Y.S. 2d. 536

McCoy v. Knoxville (1963) 41 Ill. App. 2d. 378, 196 N.E. 2d. 622

Douglas v. Melrose Park (1945) 389 Ill. 98, 58 N.E. 2d. 864.

Wood v. District of Columbia (1944) Min. Ct. App. District Col. 39 A. 2d. 67

State ex rel Morehouse v. Hunt (1940) 291 N.W. 745

Dobbs v. Board of Appeals (1959) 339 Minn. 684, 162 N.E. 2d. 32

Union Quarries, Inc. v. Board of County Courts (1970) 206 Kan. 268; 478 P. 2d. 181

Crandon v. State (1946) 159 Ky. 133, 28 So. 2d. 159

Pioneer Insulation & Modernizing Corp. v. Lynn (1954) 331 Mass. 560, 120 N.E. 2d. 913

Marple v. Troujinio, 81 Pa. D.C. 210, 38 De. Co. 362

Simon v. Craft, 182 U.S. 427, 436, 21 Sup. Ct. 836, 45 L. Ed. 1165

Louisville & N.R. Co. v. Schmidt, 177 U.S. 20 Sup. Ct. 626, 44 L. Ed. 747

State v. Board of Examiners, 274 N.Y. 367, 9 N.E. 2d. 12; 112 A.L.R. 660

Thomas Jefferson, Works 9: 470-1

Sweezer v. Green, 360 Mo. 1249; 232 S.W. 897

Gotkin v. Miller, 514 F. 2d. 125 CA N.Y. 1975

Terry v. Ohio, 392 U.S. 39 (1967)

Olmstead v. U.S., 227 U.S. 438, 485, 48 S. Ct. 564, 575; 72 L. Ed. 944 (1928)

Stringer v. Delger, 1963 CA 10 Colo., 313 F. 2d. 536

Rasmusden v. Barker, 7 Wyo. 117, 50 P. 819

Ponce v. Housing Authority of Tulare County, 389 F. Supp. 635 D.C. Col. (1975)

Davis v. Johnson, (1955) D.C. Ill. 138 F. Supp. 572

Johnson v. Henne, 1966 CA 2 N.Y. 355 F. 2d. 129

James v. Ogelvie, (1970) D.C. Ill. 310 F. Supp. 661, 663

Littleton v. Derbling (1972) CA 7 Ill. 468 F. 2d. 389.

Ury v. Sanlee, 1969 D.C. Ill.

Bunch v. Barrett, 376 F. Supp. 23

From USCA 75-1561 53

NOTE by APPELLANT:

This affidavit constitutes Appellees' entire evidence and this one page is the only valid part of it. Page 2 and all those following after contain only lies, libels, untruths, and invalid opinions of the Condemnator, without any legal foundation.

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

FILED

FEB 5 1975

ALLEN C. FOSTER, JR., CLERK

Point 3 The only applicable evidence by Official in 10 years!! These 3 lines were proved false!!

Annie Mary Timmons,

Plaintiff,

vs.

Robert C. Andrews, D. Reese Williams, William H. Tuller, Grover C. Kirby, Charles H. Thomas, Joe E. Winter, John T. Campbell and Graydon V. Olive,

Defendants.

Affidavit in Support of Motion to Dismiss or in the Alternative For Summary Judgment.

C. A. No. 74 - 2049

- - - - - - - - - - -

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PERSONALLY APPEARED before me Joe E. Winter, who, after being duly sworn, says:

1. That I am a resident and citizen of the County of Richland, in the State of South Carolina; that I am the Housing Rehabilitation Officer of The City of Columbia and one of the Defendants in the above-captioned case.

2. That upon receiving complaints from the Columbia Health Department and certain neighbors on October 15, 1971, the Urban Rehabilitation Division of The City of Columbia did inspect the property and buildings at 3107 Heyward Street, 3107 Heyward Street(rear)(Tax Map Sheet 74, Block 11, Lot 13), 3104 Monroe Street(Tax Map Sheet 74, Block 11, Lot 1), 208 Sims Street and 3100 Duncan Street(Tax Map Sheet 74, Block 7, Lot 1). A map of said propery locations is attached as Exhibit 1.

3. That the first inspection of the Plaintiff's abovementioned property revealed substandard conditions on the property and complaints were sent to Plaintiff by registered mail but returned to the Urban Rehabilitation Division unopened.

4. That on October 28, 1971, complaint notices were posted on buildings abovementioned and said notices were posted as provided under the City Housing Code Section 103, paragraph (b).

5. That on Feavruary 18, 1972, I mailed a letter to the Plaintiff by registered mail notifying Plaintiff that her property would be demolished if she

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From USCA 80-1561

Genanne J. Doughty
917 Osage Ave.
West Columbia, S. C. 29169

January 31, 1976

Mr. Claude M. Scarborough, Jr.
1514 Tanglewood Road
Columbia, S. C. 29205

Dear Mr. Scarborough:

You probably do not remember me but I was Tom Bognal's secretary a few years ago when you renovated your lovely home. I appreciated the stand you took for the little people of this state in your TV announcement this week. If you are really serious about this you should look into some of the things that the legal profession is doing to and not for the little people of this very city we like to call "The All American City". While we were proudly displaying this sign around town look what this "All American City" was doing to one of its citizens. These letters are being circulated around the country by interested friends of this dear sweet lady. Or at least I hope this is the case and not just another trick by those individuals who have been responsible for ruining her health, reputation and life. She was a next door neighbor of my Mother and Grandmother before my parents were married in 1925 and they have remained close friends all these years. She is one of the finest, sweetest, and most generous individuals I have ever met and there are lots of fine, "little", powerless people in this city who feel the same way about her. She is greatly admired by many, many people from all walks of life who are powerless to help her. Everyone who has known her these many years has loved and admired her so very much.

Some of the facts are these: She was awarded $325,000.00 by the court for the property in the 1700 block of Laurel Street which was confiscated under "condemnation without compensation" by the Tri Centennial fraud. This was for the property (land) alone. Our "All American City" condemned her apartment buildings and her brand new restaurant without just cause. The buildings were torn down and the furnishings, her personal belongings as well as the new restaurant and all of its expensive new furnishings were subsequently destroyed while she was at the point of death in another state from extremely high blood pressure, had two light strokes, severe anemia and has since had major surgery for cancer. In the meantime, greedy lawyers, bankers, people interested in real estate and others filed unjust claims against the money in escrow for her and most of this money was paid out by the court unjustly leaving just claims unpaid and loans have been filed against her remaining properties leaving her penniless, alone, and in very bad health still. I am giving her a bed which was recently vacated by my 81 year old Mother in a rest home and food and the use of a telephone because her life has been threatened in the City of Columbia since she finally got well enough to return to Columbia to see what she could salvage of her personal belongings and property.

The State and Record printed false stories that she had "disappeared and the courts could not find her to pay her this 'fabulous amount of money which was so generously awarded her by the courts'". In truth the courts had her address, telephone number and Post Office box all along while she was calling them almost daily all this time when she was able to speak. Large numbers of people including all of the people involved in the perpetration of this fraud had her address and knew of

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(App. 33)

From USCA 80-1561

her physical condition. I, myself, went to Charles Wickenberg of the State and asked him as a former student of hers which he was, to try to help her in this situation or at least to try to see to it that The State and Record at least check their facts before they printed any more damaging lies about her. He explained to me that these were very powerfull people andthat The State could not afford to help protect her rights and therefore there was nothing he could do about it as much as he loved respected, and admired her as a person. The did not have a $40,000.00 per year income, the fact was she had been robbed of the right to earn any income, to hire someont to stop this slander and probably could not have gotten any lawyer to take her side against the power of The State for any price. Therefore her right to "Freedom of Speech" was denied. She couldn't even protect herself against the so called "Freedom of the Press". As a direct result of this her property was destroyed while the police looked the other way. Five of the seven buildings left in her name have been burned and the fire and police department have made no effort to notify and used the excuse that "nobody knows how to reach her. She had disappeared, according to the papers". All of her personal belongings and furnishings for all of the buildings she owns have been looted and stolen and the buildings themselves have been vandalized and rendered useless while the City Police say "according to the papers she has disappeared and nobody knows where she is anyway". At the same time she was falsely arrested by the City Police during the time a jury was deliberating in a trial against one very crooked out of state lawyer who filed a terribly unjust claim against her escrow account. Her evidence against this man was not allowed to be heard by Judge Grimball who is holding her money anyway and according to my way of thinking should have disqualified himself in hearing this case under the circumstances She lost the case because of these two things and is now faced with the astronomical costs of an appeal after her lawyer requested to be excused from the case and the only legal council she could obtain at the last minute was a black lawyer who knew nothing of the case and just felt sorry for her. This is the kind of thing that people who have been robbed of the right to own property and earn a living are subjected to in our "All American City".

Mr. Scarborough, isn't there something that the State Bar can do to protect these people from abuse from the legal profession and others? This is a terrible thing and has made hundreds of property ownerswho know about this fearfull of their very lives. They feel that if this could happen to this sweet lady it could certainly happen to any one of them. Now my life and probably the lives and security of my family are at stake because I feel that I have to do what I can to help get protection for her. She cannot get a permit to repair the property because of unjust condemnation of the buildings and she cannot get the condemnation removed until she repairs the buildings. What is the answer to a bad situation like this.

Sincerely,

Genanne

Genanne J. Doughty

cc: Capt. Snipes, Columbia Police Department
cc: Honorable John Campbell, Mayor of The City Of Columbia
cc: Honorable Floyd D. Spence, 5th District Congressman
cc: Honorable Ernest F. Hollings, Junior Senator of South Carolina
cc: Honorable Strom Thurmond, Senior Senator of South Carolina
cc: Honorable James Edwards, Governor of South Carolina

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..From USCA 80-1561

Ap 25, 78

CITY OF COLUMBIA
SOUTH CAROLINA

CITY HALL
P. O. Box 147

October 25, 1978

Ms. Annie M. Timmons
3104 Monroe Street
Columbia, South Carolina 29203

Dear Ms. Timmons:

At the Zoning Board of Adjustment's special hearing held on October 24, 1978, the Board members present voted to uphold the Zoning Administrator's decision in conditioning the zoning permits issued for repairing the structures listed below so that said structures and premises are limited in their use as follows:

Property Location	Number of Apartment Bldgs. Original Number of Dwelling Units	Limited to
2920 Devine St. (C-3)	1 apartment building 30 dwelling units	No dwelling units
1329 Calhoun St. (C-4)	1 apartment building 2 dwelling units	No dwelling units
3107-3107½ Heyward St. (RG-1)	2 apartment buildings total of 15 dwelling units	Total of 8 dwelling units
3104 Monroe St. (RG-1)	1 apartment building 8 dwelling units	4 dwelling units
208 Sims & 3100 Duncan St. (RG-1)	2 apartment buildings total of 17 units	Total of 2 dwelling units in one bldg.

Note: This was an attempt in 1978 to cover the crimes committed for 7 preceding years made possible by Appellees' forging the owner illegally through trickery, fraud, and collusion to become as of record at applicant under the jurisdiction of Zoning and then by trying to effect the very last step of Demolition in the

(cont'd at bottom of p.8)

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From USCA 80-1561

As a matter of information, any decision of the Board may be appealed by presenting to a court of record a petition, duly verified, setting forth that the decision of the Board of Adjustment is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented to the court within thirty (30) days after the filing of the decision (October 25, 1978).

If you have any questions, please feel free to contact our office.

Sincerely,

E. Terry Floyd

E. Terry Floyd
Zoning Administrator

ETF:mb

cc: City Building Official
Urban Rehabilitation
Ms. Jean Toal

(Cont'd from p 7) 1971 Condemnation in progress for 7 yrs by distortion of a one-sentence ex post-facto law of recent adoption through complete omission of that part of the law cancelling all applicability to these properties and by misrepresentation and misinterpretations of every word of the sentence not omitted proving intent to be the controlling factor determining continued use where Govt. or some other interference beyond the control of the owner causes cessation of operation.

The Zoning Department with all the facts before it and despite having admitted that 7 large Bldgs with 72 apts could not possibly be repaired to offer 14 apts for use without demolition, that her rights afforded by nonconforming uses and the Grandfather Clause may have been violated and that Bldgs were damaged during the 7 yr. period under the Officials control, reared its head in 1978 and ruled that the owner can repair and rent only 14 of the 72 living units legally acquired, built, and operated with complete official approval thereby necessitating demolition the last step of a 1971 condemnation act to destroy the properties and get rid of the owner where why existence had blocked plans for the confiscated properties so long.

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ALEXANDER L. STEVAS,
CLERK

No. 82-123

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ANNIE MARY TIMMONS, PETITIONER,

versus

ROBERT C. ANDREWS, D. REESE WILLIAMS, WILLIAM H. TULLER, GROVER C. KIRBY, CHARLES H. THOMAS, JOE E. WINTER, JOHN T. CAMPBELL AND GRAYDON V. OLIVE, RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT G. COOPER,
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Attorney for Respondents.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATUTORY PROVISIONS INVOLVED

Section 14-400.581 of the Code of Laws of South Carolina (1962) provides, in pertinent part:

> The governing body of any incorporated municipality or county in this State is hereby authorized to adopt building, housing electrical, plumbing and gas codes relating to the construction, livability, sanitation, erection, equipment, alteration, repair, occupancy or

removal of buildings and structures located within its jurisdiction and promulgate rules and regulations to implement such codes. . . . Such codes and regulations may only be adopted by reference to national, regional or model codes listed in Section 14-400.586 and to certain special provisions approved by the South Carolina Building Code Council.

Section 14-400.586 of the Code of Laws of South Carolina (1962) provides, in pertinent part:

> Municipalities or counties are authorized to adopt by reference only the latest editions of the following nationally known codes for regulation of construction within their respective jurisdictions: . . . Southern Standard Housing Code. . . .

Section 36-502 of the Code of Laws of South Carolina (1962) provides, in pertinent part:

> Whenever any municipality of this State finds that there exist in such municipality dwellings which are unfit for human habitation due to (a) dilapidation, (b) defects increasing the hazards of fire, accidents or other calamities, (c) lack of ventilation, light or sanitary facilities or (d) other conditions rendering such dwellings unsafe or insanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of such municipality, such municipality may exercise its police powers to repair, close or demolish any such dwelling in the manner herein provided.

Section 36-503 of the Code of Laws of South Carolina (1962):

> Upon the adoption of an ordinance finding that dwelling conditions of the character described in Section 36-502 exist within a municipality, the governing body of such municipality may adopt ordinances relating to the dwellings within such municipality which are

unfit for human habitation. Such ordinances may include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinances;

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and all parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer or his designated agent at a place therein fixed not less than ten days nor more than thirty days after the serving of such complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to repair, alter or improve such dwelling to render it fit

for human habitation or to vacate and close the dwelling as a human habitation or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling;

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful";

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished; and

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred.

Section 17-1 of the Code of Ordinances for the City of Columbia (1969):

There is hereby adopted by and for the City the Southern Standard Housing Code 1973 Edition with the City Revision of Amendments thereto, recommended by the Southern Building Code Congress, which code is published in book form, which is referred to, incorporated herein and made a part hereof for all purposes, a copy of which code is filed of record in the offices of the City Clerk and Building Official.

Section 103.2 of the Southern Standard Housing Code, as amended by the City of Columbia:

> All dwellings, apartment houses, rooming houses, or buildings or structures used as such, which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitutes a fire hazard, or are otherwise dangerous to human life, or which in relation to the existing use constitute a hazard to safety or health, by reason of inadequate maintenance, delapidation, obsolescence, or abandonment, are severally in contemplation of this section, unsafe buildings. All such unsafe buildings are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the following procedure.
>
> (a) Whenever a petition is filed with the Housing Rehabilitation office by a public authority, or by at least five residents of the municipality, charging that any dwelling is unfit for human habitation, or whenever it appears to the Housing Rehabilitation Official on his own motion that any dwelling is unfit for human habitation the Housing Rehabilitation Official shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of, and all parties in interest in such dwelling, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Housing Rehabilitation Official at a place therein fixed not less than ten (10) days, nor more than thirty (30) days after the serving of such complaint. That the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint and that the rules of evidence prevailing in Courts of Law or Equity shall not be controlling in hearing before the Rehabilitation Official.
>
> (b) If, after such notice and hearing, the Housing Rehabilitation Official determines that the dwelling

under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an Order.

(c) If the owner fails to comply with an Order to repair, alter, improve, or to vacate and close the dwelling, the Housing Rehabilitation Official may cause such dwelling to be repaired, altered, or improved, cause to be posted on the main entrance of any dwelling so closed a placard with the following words: "THIS BUILDING IS UNFIT FOR HUMAN HABITATION: THE USE OR OCCUPATION OF THIS BUILDING FOR HUMAN HABITATION IS PROHIBITED AND UNLAWFUL."

(d) If the owner fails to comply with an Order to remove or demolish the dwelling, the Housing Rehabilitation Official may cause such dwelling to be removed or demolished; and

(e) The amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the Housing Rehabilitation office shall be a lien against the real property upon which such cost was incurred.

(f) Complaints or Orders issued by the Housing Rehabilitation Official pursuant to this Code shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown and cannot be ascertained by the Rehabilitation Official in the exercise of reasonable diligence and the Rehabilitation Official shall make an affidavit to that effect, then the serving of such Complaint or Order upon such persons may be made by publishing it once each week for two consecutive weeks in a newspaper printed and published in the City. A copy of such Complaint or Order shall be posted in a conspicuous place on the premises affected by the Complaint or Order. A copy of such Complaint or Order shall also be filed with the Richland County Clerk of Court and

such filing of the Complaint or Order shall have the same force and effect as other *lis pendens* notices provided by law.

ADDITIONAL STATEMENT OF THE CASE

Petitioner is the owner of seven parcels of real estate located in Columbia, South Carolina. These parcels have large buildings upon them which were once used as apartment buildings. Pursuant to his duties as established by state enabling legislation and local ordinance, the Housing Rehabilitation Official for the City of Columbia inspected these structures in 1971 and determined that they were unfit for human habitation. It was the duty of the Housing Rehabilitation Official to see that the buildings were made fit for human habitation or demolished. Although there is some dispute as to when Petitioner was first notified that the buildings would have to be repaired or demolished, both parties agree that she was given notice by 1972. A series of inspections and orders followed, which required Petitioner to repair or demolish the buildings, which had been evacuated. Petitioner never complied with these orders and in December of 1974 the City was investigating having the buildings demolished with the expense of demolition being applied to the property as a lien, all as allowed by the ordinance.

On December 31, 1974, Petitioner brought suit in the United States District Court of South Carolina to have the municipal ordinance described above declared unconstitutional as a taking without compensation, or, in the alternative, declared inapplicable to her buildings. The Respondents were all employees of the City of Columbia when the suit was initiated, and they were sued in their official capacities. The case was heard on July 28, 1980, without a jury, and an Order of Judgment in the City's favor was handed down

on August 12, 1980. The Fourth Circuit Court of Appeals affirmed the District Court decision on December 24, 1981.

REASONS FOR DENYING THE WRIT

The petition for writ of certiorari should be denied because (1) Petitioner has not established sufficient reasons for the granting of the writ, and (2) Petitioner has failed to comply with the Supreme Court Rules in the petition.

A. The petition for writ of certiorari should be denied because Petitioner has not established the special and important reasons required by Supreme Court Rule 17. Petitioner has not contented that the decision of the Fourth Circuit Court of Appeals is in conflict with either the decisions of other federal courts or the decision of any state court. Neither has Petitioner contended with specificity that the decision in question conflicts with applicable decisions of this Court.

Before addressing Petitioner's position, it is essential to establish precisely what issues were before the court below. As shown by her Complaint set out in Respondent's Appendix, Petitioner originally sued Respondents for injunctive relief and asked that the court determine whether the adoption of the provisions of the Southern Standard Housing Code confers authority upon the Respondents to condemn and demolish buildings in the City of Columbia, whether any such authority applies to buildings not being used as residences, and whether such a condemnation constitutes a taking without just compensation in violation of the State and Federal Constitutions (see Paragraph 3). The District Court found in its Conclusions of Laws that these were the sole issues involved in this case. (Appendix Page 16, Paragraph 2; all references are to Petitioner's latest Appendix.) The issues before the Court are confined to the events from 1971, when the buildings were first found

to be unfit for human habitation, to December of 1974, when this action was initiated to enjoin the demolition of those buildings.

Despite the narrow issues that were litigated in this action and the brief time period involved, Petitoner has included materials and arguments pertaining to numerous other disputes in her petition for writ of certiorari and appendix. Petitioner has been involved in extensive litigation with the City of Columbia for many years, over a number of different issues. For example, in her statement of the case, Petitioner cites several sections from a building code concerning non-conforming uses. (Petition Page 17.) Also, question numbers 5, 18, and 19 of her Questions Presented deal with non-conforming uses of property and zoning. However, these issues were decided by the Supreme Court of South Carolina in 1981 and are not before this Court. *Timmons v. Campbell, et al,* Opinion No. 81-MO-9 (S. C., filed January 27, 1981, mem.). Also, in the statement of the case, Petitioner lists a number of alleged violations of her rights beginning on Page 20. The incidents alleged in numbers 2 through 9 all occurred after the date this action began, and are therefore irrelevant. The District Court noted in footnote number one that Petitioner was apparently confusing the issues involved in her various suits. (Appendix Page 6.) These issues are not before this Court.

The issue primarily litigated below is whether Respondents had the authority to require Petitioner to repair or demolish her buildings. There is no question that this is allowed by state law and local ordinance, but Petitioner contends that it is a taking for which compensation is due. This issue was resolved by the Supreme Court of South Carolina in 1955 in the case of *Richards v. City of Columbia,* 227 S. C. 538, 88 S. E. (2d) 683. In *Richards* it was held that the predecessor to the ordinance in question was a

valid exercise of the police power and did not take property without just compensation.

The decisions of the District Court and the Court of Appeals are in accord with *Richards*. Paragraph 12 of the Conclusions of Law of the District Court is printed incorrectly in Petitioner's Appendix and should read as follows:

> In *Richards v. City of Columbia*, 227 S. C. 538, 88 S. E. 2d 683 (1955), the Court reviewed the question of whether the predecessor to the ordinance in question, which had essentially the same provisions, involved an impermissible taking of property for public use and without compensation, in violation of the state constitution. In upholding the constitutionality of the ordinance, the Court observed that . . . .

This decision was affirmed by the Court of Appeals. Therefore, there is no conflict between state and federal decisions in this instance and the granting of a writ of certiorari is unwarranted.

This is not a case in which the decision below conflict with applicable decisions of this Court. The District Court found that Petitioner's properties were unsafe, unsanitary fire hazards which were dangerous to human life in December of 1974 (Appendix Page 14, Paragraph 27); that the Respondents properly followed the procedures set out in the Southern Standard Housing Code for requiring the repair or demolition of unsafe buildings and that Petitioner failed to comply with orders to repair or demolish (Appendix Pages 14 and 15, Paragraph 28); that the provisions of the Housing Code are proper under the police power of a city to protect the safety and welfare of its citizens (Appendix Pages 15 and 16, Paragraph 31); that demolition of unsafe buildings under the Housing Code does not constitute a taking of property without compensation (Appendix Page 22, Paragraph 15). These findings of fact and legal conclu-

sions are consistent with applicable principles established by this Court. Petitioner has not cited any authority to the contrary. Her petition for a writ of certiorari is therefore inadequately substantiated.

The petition for a writ of certiorari does not establish sufficient reasons to invoke the Court's discretion to grant the writ. Rather, it is no more than a request that another court review the facts and render a decision thereon. The petition should therefore be denied.

B. The petition for writ of certiorari should be denied because Petitioner has failed to comply with the Supreme Court Rules in her petition. Rule 21(1) (a) provides that the statement of the questions presented for review should be short and concise and should not be repetitious. Petitioner presents twenty questions which fail to meet these requirements, and many of which do not relate to the issues involved in this action. Rule 21(1) (g) requires that Petitioner make a concise statement of the case. Instead, the petition contains a nine page statement which combines fact and argument. In addition, numerous pages of the Appendix have handwritten comments added to them. Pages twenty-five through thirty-three of the Appendix are further argument, pages thirty-four through thirty-five recite a state court order rendered in a different action in 1978, and pages thirty-six through forty-two present a letter to a local newspaper and Petitioner's response; all are irrelevant and are improperly in the Appendix.

Rule 21(5) provides that the failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to an understanding of the points requiring consideration will be a sufficient reason for denying the petition. This petition should be dismissed for that reason.

CONCLUSION

In 1971, Petitioner's buildings were found to be unfit for human habitation. Until late 1974, Respondents worked with Petitioner in an attempt to resolve matters short of demolition, but Petitioner failed to repair the properties. Now, over ten years later, the buildings remain unfit for human habitation and are a safety hazard to the community. There is no unique federal issue presented, nor are there issues over which various courts differ. The Petition for Writ of Certiorari should be denied to allow Respondents to adequately protect the health, safety, and welfare of the citizens of the City of Columbia.

Respectfully submitted,

ROBERT G. COOPER,
Post Office Box 147,
Columbia, South Carolina 29217
(803) 733-8247,
Attorney for Respondents.

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ANNIE MARY TIMMONS, PLAINTIFF,

versus

ROBERT C. ANDREWS, D. REESE WILLIAMS, WILLIAM H. TULLER, GROVER C. KIRBY, CHARLES H. THOMAS, JOE E. WINTER, JOHN T. CAMPBELL and GRAYDON V. OLIVE, DEFENDANTS

COMPLAINT

Civil Action No. 74-2049

1. That Plaintiff herein is a resident of the State of Florida and each of the Defendants is a resident of the State of South Carolina, and the Defendants Robert C. Andrews, D. Reese Williams, William H. Tuller, Grover C. Kirby and Charles H. Thomas, constitute the Board of Zoning Appeals of the City of Columbia; the Defendant Joe E. Winter is the Housing Rehabilitation Officer of the City of Columbia; the Defendant John T. Campbell is the Mayor of the City of Columbia; and the Defendant Graydon V. Olive is the City Manager of the City of Columbia a municipal corporation organized and existing under the laws of the State of South Carolina.

2. A diversity of citizenship exists between the Plaintiff and each of the Defendants and the matter in controversy exceeds the sum of Ten Thousand and no/100 ($10,000.00) Dollars exclusive of interest and costs.

3. This is a proceeding for an injunction and a declaratory judgment to determine a question of actual controversy between the parties as to whether the adoption of the provisions of the Southern Standard Housing Code confers authority upon the Defendants to condemn and demolish buildings within the City of Columbia, whether any such authority applies to buildings not being used as residences, and whether such a condemnation constitutes a

taking without compensation in violation of the State and Federal Constitutions.

4. Plaintiff is the owner of real property located at 1329 Calhoun Street, 2920 Devine Street, 3100 Duncan Street, 3107 Heyward Street, 3104 Monroe Street and 208 Sims Avenue. Such properties have great value although they have been damaged by vandals or common criminals and are currently used for storage of personal property belonging to the Plaintiff and her sister. Plaintiff has undertaken to secure the buildings against unauthorized entry, but such entries have continued although such properties are in well travelled residential sections of the City of Columbia. Plaintiff was heretofore served with a Complaint and an Order providing for demolition and she has appealed and has exhausted her administrative remedies and the Defendants are about to commence demolition of her properties and destruction of the contents. Plaintiff will suffer irrevocable injury if such action is allowed and will be deprived of her property in violation of the State and Federal Constitutions and the Laws of the United States.

WHEREFORE, Plaintiff prays that this Court issue a rule to show cause to the Defendants why a temporary injunction prohibiting this condemnation should not issue, advance this cause on the docket, declare that said ordinance is unconstitutional and constitutes an unlawful taking of Plaintiff's property or in the alternative is not applicable to Plaintiff's properties, enjoin the Defendants from further proceedings and grant her such other and further relief as may be just and equitable, including her costs.

DRAWDY & BEALE,
By: /s/ J. WESLEY DRAWDY,
Attorneys for Plaintiff,
2014 Sumter Street,
Columbia, South Carolina.

Columbia, South Carolina,
December 30, 1974.